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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, MARCH 20, 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Lakeshore Area Multi-Service Project, Occupational Health Program:

Bloch, Jules

From the Canadian Auto Workers, Local 112:

Smart, Norm, Financial Secretary

Falconi, Peter, Benefit Representative

From the Board of Trade of Metropolitan Toronto:

Albinson, David L., Chairman, Labour Relations Subcommittee on Workers' Compensation

Brady, David W., Labour Relations Subcommittee on Workers' Compensation

From the Provincial Building and Construction Trades Council of Ontario:

King, Andrew

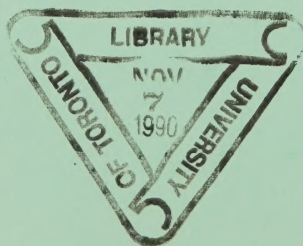
From the Canadian Manufacturers' Association, Ontario Division:

Caldwell, Barbara, Vice-Chairman; President, Cleanwear Products Ltd.

Franceschini, Ron, Chairman, Workers' Compensation Committee; Salary Services Manager, Stelco Inc.

Chabot, Pierre, Compensation and Safety Manager, Dylex Ltd.

Robb, Jim, Supervisor, Workers' Compensation, Dofasco Inc.



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, March 20, 1989

The committee met at 9:05 a.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order. We are here to continue our examination and hear submissions on Bill 162, An Act to amend the Workers' Compensation Act. The bill has passed second reading in the Legislature and has been referred to this committee for public hearings. At the conclusion of that, by the end of April, we will examine the bill clause-by-clause, at which time there will be an opportunity for amendments to be put to the bill if the committee so desires.

We have a full schedule this week. We are in Toronto all week, in this room on Monday, Tuesday and Wednesday. On Thursday we move in the morning to another room and in the afternoon we are at Convocation Hall for the large meeting. For the rest of the week we are here.

Before we start, is Roland Mainville in the room? No? Okay.

We have with us this morning Jules Bloch from the Lakeshore Area Multi-services Project, known as LAMP. Welcome to the committee. I hope you will jump in.

LAKESHORE AREA MULTI-SERVICES PROJECT, OCCUPATIONAL HEALTH PROGRAM

Mr. Bloch: It was noted that it was hot in here. Many people have talked about the heat. Well, this is an appropriate committee for it to be hot, I would suggest.

The LAMP occupational health program is pleased to have the opportunity to present itself before you today. The LAMP program is the only community-based occupational health service in Ontario. We are funded jointly by the Ontario ministries of Health and Labour to provide the Lakeshore community with medical assessments, hazard information and various educational programs on workplace health problems. Individual workers, union representatives and employers have all made use of LAMP's occupational health services during its two-year pilot phase. We are very lucky, in fact, to be re-funded, so our pilot phase has moved into a more permanent phase.

The focus of the LAMP occupational health program is prevention of work-related health problems, especially industrial disease, through proper industrial hygiene and early detection of medical conditions. Nevertheless, in the past year nearly one third of our clientele were referred for Worker's Compensation Board assessments, often permanent pension assessments, usually at some stage of an appeal. While we do not advocate at the WCB for either workers or employers, we do have concerns about the provisions in Bill 162 that will directly affect our clientele and how we do our work.

To place our comments in context, we need to emphasize what LAMP means

by "community based" since this term is often used to describe small organizations operating within a specific community, as compared to a larger regional organization. The LAMP occupational health program fits this definition of "community based" in terms of scale, location and commitment to a specific geographic area. Community based, however, also refers to active community control of the program through committees and an elected board.

I am one of the members of the committee on occupational health and safety. It is a tripartite committee—that is, members of labour, members of management and government are involved in it, which is obvious from the funding. I take it that with the new Occupational Health and Safety Act, which I have had a chance to peruse, it might become a bipartite committee, but we are in your hands and maybe we will be speaking here another day.

Community control for the LAMP occupational health program translates into a client-centred, caring health service that is physically and psychologically accessible to all community members. It is from this client-centred perspective and on the basis of our experience with the WCB that we raise the following concerns about Bill 162.

0910

Pension assessments: Many physicians have long been appalled at the notion of an arbitrary pension rating system known colloquially as the meat chart. It is encouraging, therefore, to see a philosophical commitment by the Workers' Compensation Board to compensation for noneconomic loss or loss of enjoyment. However, the meat chart system is unfortunately not abolished under Bill 162. If lump sum compensation is truly to reflect loss of enjoyment, the arbitrary guidelines of a meat chart are particularly inappropriate to assess the impact of a disability for individual workers. You can think of thousands of examples of how that would work.

Your new subsection 45(5) provides that "a medical practitioner who conducts a medical assessment under this section shall...(b) assess the degree of permanent impairment of the worker according to the prescribed rating schedule, having regard to the existing and anticipated likely future consequences of the injury...."

We feel this places an undue burden or undue power in the hands of the physician. Is the physician really the best-suited health professional to assess the psychological and social future consequences of an injury? It is such an elusive concept, the idea of loss of enjoyment. Physicians should be restricted to giving medical opinions only. Having said that, however, since patients are individuals with idiosyncratic and unpredictable courses of recovery, it is not clear that medical science allows the accurate prediction of the likely future consequences of the injury.

Further, it is our understanding that board doctors will continue to play a central role in determination of these lump sum awards at a time when the WCB is under increasing pressure to cut costs. In our experience, board doctors have little or no contact with the workers they assess. They will nevertheless be called upon to determine something as subjective as loss of enjoyment. We have been surprised, in some cases, at the arrogance of certain board doctors.

LAMP occupational health program has seen a considerable number of workers with repetitive strain injuries. When disputing the diagnosis of one such claim, a letter from a well-known board orthopaedic specialist ridiculed

the very concept of a repetitive strain injury, despite its international acceptance. He went on to accuse the LAMP physician of laziness and/or ignorance because she had not provided an underlying diagnosis, which in fact she had done. The claim was eventually accepted, but if board physicians can treat their colleagues with such disrespect, are they really the best judges of a sensitive issue like noneconomic wage loss for injured workers, especially in a forum where it is the board doctor who makes these decisions in the first place and is not necessarily challenged by other expertise?

Despite the rostering of medical practitioners for these assessments, we are sure that the LAMP occupational health program physician will continue to receive requests for assessments of permanent impairment and disability, whether our physician is on that roster or not. This is because both workers and their advocates know they will receive an independent, unbiased medical opinion that they can trust and understand. We would like to see the WCB recognize that this demand will continue, because injured workers understand the importance of an independent medical assessment.

As a facility with a particular interest in industrial disease, we are also disturbed to learn that these lump sum payments for permanent disability will be adjusted according to age. We also have problems with the ramifications under the Ontario Human Rights Code.

Most industrial diseases have a long latency period and do not even manifest until a time when benefits would be severely limited by age. The complicated case of one LAMP client illustrates well the problem with age adjustment. A 64-year-old gentleman with severe lung disease, to the point where he is completely dependent on portable oxygen, was recently awarded a permanent disability pension on the basis of LAMP's medical assessment and literature review. His is a case of mixed disease—asthma, bronchitis and emphysema—that developed from mixed exposures, including cigarette smoking which had stopped 15 years ago, metal fumes and dusts in the workplace and a familial disposition to asthma.

LAMP's physician was able to demonstrate that workplace exposure had been a significant contributing factor to this man's disability; hence the pension award of \$250 per month plus a lump sum of nearly \$5,000. Presumably, under this new system he would have received considerably less because his disease had a gradual onset and because his claim was not submitted until he was 63 years old.

It is noteworthy that this man was under the care of the company physician for many years but no claim was submitted, the concept being that if a company can shelter a claim long enough and not send the worker through the Workers' Compensation Board rolls—and I do not think this is a one-time shot; I think this is something that companies will be under pressure to do—then what you are facing is putting the worker in a position where that worker, because of the age adjustment, will receive less. You are creating a system which has loopholes and those loopholes will be used adversely, we are suggesting, with respect to certain workers.

Discretionary power of the WCB: In the case of lump sum payments, there is not enough discretion allowed for individual cases because of the meat chart system and age adjustment. What discretion exists is placed in the hands of the wrong people, board physicians, who have failed to win the confidence and trust of injured workers.

Ironically, the board has increased its discretionary power to determine

wage-loss payments even though this aspect of award determination could be much more objective since we know what the injured worker's pre-accident earning capacity was. If the practice of paying the difference between pre-accident earnings and the earnings of a job a worker could theoretically do were in place now, many of LAMP's clients would be experiencing considerable financial hardship. We have seen many clients who have come to us precisely because they were advised they could return to their previous job or other jobs when they feel, legitimately, that they cannot do so because of pain. The board has given itself a large measure of discretion in an area where, in LAMP's experience, its judgement is often flawed.

I am sure this committee has heard many times and I am not saying anything new before this committee that the deeming provision, where one deems someone capable of an illusory job, is folly in terms of the economic realities of what an injured worker is deemed to be able to do and what an employer wants. One would hope that aspect of the act would be curtailed and one would see the idea of an actual job and not a deemed job as the way to look at the pension.

On a less client-oriented point, the number of items left to regulation, and therefore beyond the influence of the Workers' Compensation Appeals Tribunal or that of other independent bodies, also increases the discretion of the WCB at a time when many observers feel less discretionary power is in order. Indeed, the policies of the board have been called into question on numerous occasions by WCAT.

The Ministry of Labour has had some success in the implementation of a consultative process for the development of regulations for the Occupational Health and Safety Act. That, as you know, is a bipartite process where labour and management sit down and try to hammer out some regulations in certain sections of that act.

We are suggesting that this idea of duality, which seems to be permeating in Ontario at the moment, might be a way of limiting the WCB's regulatory power while allowing for both the employer and labour to make sensible regulations. You have left most of the act to the WCB, to the Lieutenant Governor in Council, to determine. The act will be filled in at a later date and I sit before you without having the full knowledge of the painting in of your act.

0920

Rehabilitation and reinstatement: The Minna-Majesky task force called for a restructuring of the WCB so that rehabilitation would become the right of every injured worker. Section 54a directs the WCB to design and provide the worker with a rehabilitation program, but the decision of eligibility is still "in the opinion of the board." This is another area where there are no criteria provided and it is another area where the WCB will paint in the criteria.

A small program such as LAMP is desperate to find effective medical and vocational rehabilitation programs for referral. Without criteria, however, we are no further ahead in assessing our clients' chances for obtaining those services through the WCB.

While Bill 162 does not enshrine rehabilitation as a right, it does provide the right to an assessment for vocational rehabilitation services for all workers who do not return to work within 45 days. As long as this is not

used as a policing mechanism, that is a step forward, but again, the way the act is written, it is very hard to see how that will not be used as a policing mechanism.

How is that different than the medical assessment used in the deeming? The worker comes and gets assessed for the medical rehabilitation program and is told, "You can go on that program." The result of that program directly affects that worker with respect to the deemed job. It is in the worker's interest to fail the program, because you have created an illusory job for that worker as the standard to meet to diminish the worker's pension.

As well, on the issue of reinstatement, the exemption of businesses with less than 20 employees will be a serious deterrent for the reinstatement of workers in the Lakeshore. The Lakeshore was once an area boasting hundreds of manufacturing jobs in large industries. As you know, the Lakeshore is undergoing changes. Currently, a full two thirds of the workplaces in Etobicoke employ less than 10 people.

While this exemption is understandable, since small employers have less flexibility in modifying work or finding alternative employment for an injured worker, it leaves the majority of Etobicoke workplaces unaffected.

Smaller industries also tend to have higher accident rates, according to the Metropolitan Toronto District Health Council task force report on health and safety in 1984.

Current economic wisdom suggests that the trend to smaller workplaces will intensify. In its long-term strategy for the reinstatement of injured workers, Bill 162 does not reflect trends in employment. As well, Bill 162 allows for further exemption of industries from this very important aspect, especially in the construction industry, which is an industry that I am most familiar with. I would refer you to the Labourers' International Union of North America, Ontario Provincial District Council brief, which LAMP accepts in the area of reinstatement for construction workers.

We are pleased that the obligation to reinstate specifically states that the alternative employment must be of a nature and at earnings comparable to the worker's pre-accident employment.

LAMP has recently had a case of a woman who had a repetitive strain injury on a poultry processing line who was given a make-work inspection job. This job was excruciatingly boring and, before visiting LAMP, deterred her from filing a claim. We trust that a make-work situation of this nature will not be considered of a nature comparable.

Other aspects of the reinstatement section are more disturbing. The requirement that guarantees an injured worker his or her job for only six months after reinstatement leaves injured workers very vulnerable to being laid off or fired in a productivity hike or other situations. This is particularly alarming in light of the changes in permanent pensions.

Once again, the worker gets the illusory job that has been deemed and he goes to work. It is a good job; it is rated highly. Six months later, the employer lays the worker off. It is known the worker has had that disability and the worker is left with the deemed job, the potential to reach. The pension, obviously, is wanting and the worker no longer has a job. Then the worker has to make some interesting arguments before the Ontario Human Rights Commission to try to say that he was being discriminated against as a consequence of a disability.

I note, interestingly enough, that we no longer call it disability, we call it impairment. I assume you have tried, in effect, to say, "No, that is not a disability and not grounds for the Human Rights Code; that is impairment now." I think the Ontario Human Rights Commission will not be fooled by that in any way, but you never know. We will see.

The Human Rights Code, which does not exempt any industries, in fact requires employers to make reasonable changes in the design of jobs so that disabled workers can perform them. Any type of situation where you are forcing a worker into hearings of that sort, which are expensive and have difficult legal concepts, creates conflicts in procedure and will create enormous problems for both the workers and their advocates, and will trickle down to us who do the assessments at LAMP.

We have endeavoured to make everyone's job and life easier when dealing with the WCB by compiling all medical information, work and other relevant histories with clear assessments of work-relatedness into one report that both worker and advocate trust and understand. Conflicts in procedure such as this will only make our endeavours more difficult.

LAMP's experience and the experience of our clients indicate that the WCB needs to be less bureaucratic, not more so. Bill 162 contains serious flaws that will only enhance the board's bureaucratic sluggishness, while placing many injured workers in financial jeopardy.

While the movement towards compensation for noneconomic loss, the emphasis on vocational rehabilitation and the push for mandatory reinstatement are to be applauded, Bill 162 does not stand for those things, in our opinion.

I am certainly willing to entertain questions, if you have them, about our position.

Mr. Chairman: I have one to start off with. Why does LAMP not do advocacy work on behalf of its clients when it is dealing with appeals at the board level?

Mr. Bloch: One reason is that our budget grant, which has been granted from the Ministry of Health and the Ministry of Labour, does not allow for hiring a full-time advocate who would present cases. Certainly, if you people would like to help out in another capacity, we are happy for that. Secondly, our expertise is medical and medical assessments. We have doctors, hygienists, on staff and that is the role we have taken.

Mr. Chairman: So when someone comes to you with a problem, a letter from the board saying that his claim has been rejected, what do you do—refer him to another group?

Mr. Bloch: We refer him to other groups. Usually, the way this happens is that groups use our expertise; different advocates. In my other capacity, for instance, I present in front of the Workers' Compensation Appeals Tribunal, and I would refer the person whose claim has been disputed to LAMP for an assessment by its doctors and its specialists. Then I would use that assessment, if it helps the worker, to appear before WCAT.

Mrs. Marland: Certainly, LAMP is a tremendous organization. It has a wonderful reputation in the Lakeshore community. I know the member for Etobicoke-Lakeshore (Mrs. Grier) had a lot to do with the establishment of that organization.

Mr. Bloch: That is correct.

0930

Mrs. Marland: Anyway, it is wonderful that you can speak on behalf of such a great organization. Before I ask you the question, can I just say that we agree, certainly in the Progressive Conservative Party, about the weakness of the word "deeming." We certainly have had concern with that from the beginning.

I also agree very strongly with your thrust that obviously the Workers' Compensation Board, in order for it to be affordable for the employers and work for the employees, has to be less bureaucratic. That is where we see the big absorption of funds going at the moment.

Just to understand exactly where you are coming from professionally, two questions: Are the doctors and the staff who work for Lakeshore Area Multi-service Project working on a full fee basis? If they are not able to afford the service, are your clients eligible for the service because it is a Ministry of Community and Social Services funded program?

Mr. Bloch: It is a program which is not allowed to use the Ontario health insurance plan. Our doctors and hygienists are on salary. Anyone can come to the program who has a work-related injury and they will be looked at. We have a catchment area, which is the Lakeshore. It is open to anyone who has a work-related injury. I guess if a lawyer in a law office, an employee, a typical larger wage earner, if I can use that, although not all lawyers are large-wage earners—

Mrs. Marland: So it is without a fee-for-service basis, then.

Mr. Bloch: That is right.

Mrs. Marland: Everybody is eligible.

Mr. Bloch: That is what I was trying to say.

Mrs. Marland: Right. You did say at the outset that this is the only community-based facility like this in Ontario.

Mr. Bloch: If the Ministry of Labour or the Ministry of Health are funding someone else, we do not know about it. There have been applications now for similar funding, I believe, from the Sandy Hill Health Clinic in Ottawa, but so far we are the model of this model. I guess the Ontario Federation of Labour has a different model. It has a different type of clinic which also is an occupational health and safety clinic which will be doing similar things, I would assume.

Mrs. Marland: Can I just ask about your concern about rehabilitation? When industry and the employers look at rehabilitation as a right, I think initially the reaction is that they are looking at it as being very expensive for them. They balk at that aspect.

Would you agree, based on your experience, that if we had rehabilitation quickly because we improve or eliminate some of the bureaucratic tie-up before that injured worker is able to access the rehabilitation—sometimes they cannot for physical reasons, but often it is the process that delays it—would you think if it could be processed more expeditiously it would be less

expensive in the long term for the whole system, including the employer, to have that worker rehabilitated, obviously, and be back at work?

Mr. Bloch: Yes. The faster a worker is rehabilitated and can perform a real job that is there, the better it is for the worker and for everyone concerned. Workers want to go to work. They do not want to be at home collecting some stipend and feeling unproductive. Workers want to work. People want to work. So the faster you have a real rehabilitation, the faster the person can be retrained to be productive and to feel proud about himself or herself, the better it is.

But in this situation, it is not just bureaucracy that impedes this; it is the threat of the rehabilitation being used as a deeming function. In other words, "We're going to assess your rehabilitation, you're going to show up to be rehabilitated and then we're going to deem what your job is, and your job isn't a real job; it's an illusion." Why would a worker want to really participate in that program when it is going to cut into his or her financial pension at the end of the day?

Mr. Chairman: I am sorry for being so abrupt. We are running out of time; we are actually out of time. Perhaps a final question, Mr. Dietsch.

Mr. Dietsch: Mr. Bloch, I must compliment you on a very thoughtful presentation you have put before the committee for consideration. I was interested in your comments with respect to your pension assessment and the words that you used, "a philosophical commitment" towards moving away from the meat chart. I think Bill 162, in my reading of the bill, shows some initial determination by a chosen physician on the part of the worker as well as allowing an opportunity for a worker to appeal.

The minister has indicated, in his proposed amendments, to give individuals who are going to make a presentation before the committee an opportunity to understand that it would be appealable to the Workers' Compensation Appeals Tribunal. If that were not the process that was used, what would you use in terms of replacing the impairment chart?

Mr. Bloch: The first thing is I am happy to hear that we are going to WCAT with everything in this bill. If that is what you are saying, then that is a step forward. That is what the minister said, but I have not seen the amendments yet. I do not think anybody has. All we have had is the newspaper report. Correct me if I am wrong. It certainly has not crossed my desk.

Mr. Dietsch: He made the announcement in the House.

Mr. Bloch: I read the announcement, but I have not seen anything else. I can go over the part about where I see it might fit in, and then we still have a problem because of the 12 and 24. In other words, you can only review after one year and then again two years later or whatever. I do not want to take up your time by going through the technical aspects of it. My point is you can go to WCAT the first time and get an award on that and then after the second review you would have to go to WCAT again. My point is I have not seen it in writing, so I do not know if it is good or, again, illusion.

Mr. Dietsch: But more particularly, zeroing in on the impairment chart, what would you use? What would you think would be the appropriate way to go?

Mr. Bloch: I think there would have to be some type of attempt to find out what the loss of enjoyment really is. Not everyone's loss of enjoyment is the same with respect to an injury, and I think we would have to have some ability to do that. If I am an amateur musician—that is the example I did not read out—as opposed to being someone who does not care about music, my 10 per cent loss of hearing means something else. Obviously if it is a 90 per cent loss of hearing, it is the same for everybody. But if it is a small loss-of-hearing impairment and for some reason I get enjoyment from Bach, then that is different from someone else perhaps.

I am saying there obviously have to be two levels. There has to be the objective level, the standard meat chart, because it would be difficult to find another system, but there would also have to be differences in terms of further compensation as a consequence of particular subjective loss.

Mr. Dietsch: You agree with some type of impairment chart, but yet it should be considerate of individuals?

Mr. Bloch: I am saying that I am not expert enough to think of another way right at this moment. I think it would be great not to have a meat chart, because it implies certain things that I do not think we are comfortable with. But if you are going to have a meat chart—right now you have put me on the spot; I do not have an answer—you have got to have a way to bump it up as a consequence of qualitative subjective reasons.

Mr. Dietsch: I guess we have to do all these things with keeping administration costs in line with all the rest of it. I appreciate your comments.

Mr. Chairman: Mr. Bloch, thank you for your presentation to the committee. We appreciate it.

We have with us this morning, from the Canadian Auto Workers, Mr. McNally and Mr. Smart. I believe they are both here. Make yourselves comfortable and introduce yourselves.

CANADIAN AUTO WORKERS, LOCAL 112

Mr. Falconi: Yes, we will do that. I am Mr. Falconi. I am here on behalf of Local 112 of the Canadian Auto Workers. I represent 3,600 people at the de Havilland unit.

0940

Mr. Smart: My name is Norm Smart. I am with CAW Local 112. I am the financial secretary. As Mr. Falconi said, he is the benefit rep at one plant. We have five plants. The total membership is just over 4,000 people. Understandably so, there are a lot of injured workers in our field.

I apologize for Mr. McNally's not being here. Unfortunately, he is taken with the flu. I got hold of Mr. Falconi during the weekend and he decided to come down.

Our brief is very brief. We try to hit just a few points. I have a supplement to it, which is on the back page, and there is a loose leaf which indicates a portion of our collective agreement. We will get to that.

May I take this opportunity to say one word at the outset of these

proceedings, "Help." This is the one word that injured workers I have represented over 20 years are pleading; simply, "Help." They need help. This legislation is like selling a dying person oxygen which he may need desperately to survive. These injured workers are not asking for too much; it is the employers who are asking for too much. Mr. Sorbara is the tool by which the injured workers will continue to suffer if this legislation is not withdrawn.

I have with me today a number of injured workers—from de Havilland, Woodbridge Foam, General Foam and Cushion, Crothers and Spar—who are looking for help from this government; instead they are looking at a dark and bleak future. Mr. Sorbara is touting section 12, now section 41, as a saviour for injured workers. However, capping the maximum wage is no better and no fairer than what is in place, and even Professor Weiler, in his report, suggested this.

I also have with me today many injured workers whom I have represented in appeals to have their pensions increased. In these cases, the success rate is over 85 per cent in favour of the increase. Why is Mr. Sorbara, who says he has listened to many injured workers, groups, unions, etc., not aware that this proposed section 15, section 45, severely limits the injured workers' pensions and indeed cuts them off at age 65?

It has been my experience that employers cringe at the fact that an injured worker is receiving a Workers' Compensation Board pension and continues to work in the company. The companies, as well as Mr. Sorbara, have a total disregard for the injured worker who must live with the injury and endure it the rest of his life. Why should the pension not remain with him? His injury certainly does.

Proposed section 19: It is extremely difficult to get employers to reinstate injured workers, even with a collective agreement such as Local 112 has. A recent letter from Mr. Sorbara to the CAW is still no assurance of protection for workers being reinstated—i.e., to a former job or comparable alternative employment—or to be offered a suitable job if a vacancy occurs. The interpretation is leaving the injured worker high and dry. What is significantly missing is those injured workers presently needing placement. For them there is a big fat zero. Mr. Sorbara has completely ignored the Minna-Majesky report again.

Proposed section 20: Very simply, the injured worker's own physician is the best qualified to assess the injured worker's medical status, not someone who knows very little or nothing at all about the injured worker. Mr. Sorbara taketh away and Mr. Sorbara giveth back. After denying the injured worker the right to appeal, Mr. Sorbara intends to give it back. Appeals are a fundamental right of the injured worker and should remain so. Of course, I understand that there is an amendment to the act. I suppose, when we are finished with these hearings, there will be amendments to the amendments to the amendments.

I may not have covered the proposed Bill 162 in its entirety; however, these are a few concerns of the injured workers I represent. My one last thought is this: many of my injured workers in Local 112 will never be able to return to their jobs because of isocyanate sensitization. There is absolutely no thought by the ministry for the loss of their vacation entitlements—that is not in there, but it should be—pensions or other benefits which they all lose or must begin to accumulate again.

The next two pages, which are a supplement, are just zeroing in on those that we have had the biggest problem with in Local 112. It is our belief that Bill 162 should be renamed the Employers' Amendments to the Workers' Compensation Act. These amendments ignore the necessary reforms that would benefit injured workers in Ontario. It is abundantly clear to representatives of CAW Local 112 that the current system has failed to meet the needs of injured workers, mainly because of interpretation of the existing act by the WCB. These new amendments will dramatically increase the discretionary powers of the WCB.

Quite frankly, this scares the hell out of the representatives and the injured workers. The whole concept seems to be to reduce costs at any price. The fallout from these amendments, in my opinion, will be politically destructive for this government, especially when the injured workers find out the real meaning of these changes. Professor Ison summed up the changes best when he said that these changes would be an administrative nightmare.

In regard to the changes and effects on existing collective agreements, company-paid benefits such as the Ontario health insurance plan, dental and health care will no longer be included in the calculations for WCB rates. These proposals will also inspire new limitations by companies on pension services, holiday pay and benefit programs.

This legislation will have precedence over any conflicting collective agreements but will not preclude an employer from offering more: page 24. In spite of assurances from the ministry, we believe that benefits beyond one year, which are now present in collective agreements, will be arbitrarily limited.

The employer is obligated to offer the worker the first opportunity to accept alternative employment: page 27. Our concern with this provision is that employers will use this opportunity to undermine 40 years of collective agreements and bargaining: see section 24/01 under our collective agreement, which is a loose supplement to your paper.

We believe that Bill 162 should be scrapped and a new bill introduced, focusing on prevention of accidents as a real vehicle to reduce accidents and costs in this province. This can be achieved by educating the workforce on accident prevention. The future workforce could also be introduced to and instructed in workplace safety, beginning at a grade 9 level.

Punishing current and future injured workers is political suicide for our government and financial and emotional suicide for our injured workers. This bill is a giant step backward and we in Local 112 urge this committee to recommend to the minister to start over again and to allow input from the injured workers and their representatives before legislation is reintroduced.

Thank you for your time. The injured workers, along with myself, hope that you will take all our concerns seriously and recommend that Bill 162 be withdrawn from the Legislature.

Mrs. Marland: Mr. Smart, good morning. When you talk about the injured worker's own medical adviser-physician and you say, "Not someone who knows very little or nothing at all about the injured worker," there are two sides to that, and I just wonder how you would deal with that from your perspective.

One side is that not all physicians would have special experience in the

kinds of workplace injuries that the injured worker may be dealing with. The other side is that if the injured worker does in fact go to his own personal physician, that physician knows him very well, if it is his regular doctor, and knows whether something is psychosomatic or a real injury that is having a certain effect on him. Perhaps the balance of specialized experience in workplace injuries can be quickly outweighed by the physician knowing the patient very well and knowing whether he has a high pain tolerance, for example, or whether he is a complainer.

Is it possible that everyone would be better protected with a physician who knows the patient? Is that the point that you are making?

Mr. Smart: That is really the point we are trying to make. In almost 99 per cent of the cases at least that we have, a man's personal physician is an MD, and normally the worker is sent to a specialist, depending on the problem, back, arm, maybe internal or whatever. Usually the specialists are, I think, unbiased, because they do not have, shall we say, a personal interest in the actual case other than the injury.

I have had glowing reports from specialists that the WCB has totally ignored and turned down. However, after going to the WCAT, we certainly have received a better view from them, I think, as being on the outside looking in, and it worked out extremely well for our injured worker. I have been to the board doctors. We have talked with board doctors, both Mr. Falconi and myself, and a lot of them are MDs, some are specialists, but they have no concept of what a plant is like inside.

Mrs. Marland: Oh, really?

Mr. Smart: Very little, in any of the ones I have ever met. In my particular case, the isocyanates sensitization, I have not found anybody at the board who has been able to relate to that problem in any way, shape or form. We already have in place, in our case, the Ontario Workers Health Centre. We have them in our union hall and where the people are going through a program. Those reports are being sent to the board and are now being taken as fact, but the thing is that it is taking longer and longer for these people to get their money from the board.

I am sure the board must rely on its medical advisers, but it is taking longer and longer. You never really get any dispute. You never get anything in writing that says, "Dr. Taylor from the WCB says that." It never says that ever. Once you get into the appeal process and you start bringing up the documents that you have, as I said, if there is an 85 per cent increase in pensions, in every pension, and it is anywhere from one per cent to 10 per cent, then I cannot understand how a doctor can be 100 per cent wrong.

That is why I think that the man's personal physician and/or specialist are probably the best people to deal with the problem. They are the best people because they know what the problem is. If there are family problems and, as you say, some psychosomatic problems, they know it and they know why. The board doctor sees the man for five minutes, though it has been longer lately because we challenged that.

How can you see somebody for five minutes and say, "Yes, you are going to have this injury for the rest of your life" or "You will never have it again"? Most times it is: "You will never have it again. You should be well in two weeks or six weeks." I just do not understand how a doctor can say that. That is why we are saying that his own personal physician and/or specialist is the best person to determine.

Mrs. Marland: Norm, can I ask you one fast question just on another section? You are saying that in spite of assurances from the ministry, you believe that benefits beyond one year, which are now present in the collective agreements, will be arbitrarily limited. This is an issue that has been coming up with our hearings around the province: How you can have a collective agreement and then have it in conflict with that clause in this legislation?

You said in spite of assurances from the minister. Has your local received those assurances or what is it that you are referring to there in terms of assurances from the minister?

Mr. Smart: If you do not mind, Mrs. Marland, I will have Peter Falconi answer that. I will say this. We do have a letter that we wrote to Mr. Sorbara and he sent a letter back. It was a good letter, but when we deal with companies, corporations, it is on a unilateral basis that the companies usually do things. There is where we have our problem. Nothing is served there. Something should be etched in stone I guess, but I will let Peter answer that specific question.

Mr. Falconi: Margaret, our concern with the limitations of benefits is contained in the document, which is the Workers' Compensation Reform 1988. In that language it says that, "The proposals will have precedence over any conflicting collective agreement provision but will not preclude an employer from offering, through collective agreement or otherwise, re-employment provisions," etc.

It is our experience, with our employer in particular and others, that we feel that the limitations that have been placed on 12 months of benefits will be introduced and used as an excuse to limit the benefits that we have had through past practice and collective bargaining for years. It is just a simple matter of the company issuing a letter to the union declaring that the law will take precedence and it is not going to give more because it is its prerogative under these provisions not to give them. It is their prerogative, and we have had them.

Now they can terminate that and we do not want to find ourselves in a grievance procedure system, which is clogged by 3,000 grievances at the present time, having to fight these extra benefit limitations.

Mrs. Marland: I understand your explanation. The answer to my question is that you have had a letter from the minister. Thank you.

Mr. Wiseman: Margaret has asked pretty well what I was going to ask about the physician. The injured workers seem suspicious of the physicians at the Workers' Compensation Board, so why would the owners or the employers not feel suspicious if you just left it in the hands of the local physicians?

It is a little different, but I have people write letters to me, even though we are provincial, about the Canada pension plan, that they are totally disabled. I have talked to the odd doctor and I have said, "How in Sam Hill did you sign that, you know, saying that so-and-so was totally disabled?" when, in fact, if he were to put his hand on a stack of bibles, he would not do it. But he signed nevertheless as a medical doctor that the person was totally disabled and the person really was not, for federal purposes, for getting the Canada pension plan.

To me as a layperson, it would seem fair when the act has to work for both employer and employees, that you have an outside opinion. As Mrs. Marland

said, there are cases where my own physician at home would not be capable and would not feel confident. He would send me off to a specialist in the case of a back injury or some other injury. I just cannot see, in view of what I heard a week ago or so in Ottawa, that the Quebec act was working well. I have heard since that it is a real shemozzle since they got rid of the board doctors and are now allowing people to do what you say and use their own physicians.

I heard what you told Margaret but I do have some problems with that, if we are going to be fair to both and not have that suspicion on the employer's side that you are stacking the deck against him, as we have heard so many times from the injured workers.

Mr. Smart: The deck has been stacked against the injured worker for quite a long time. We have just found that the WCB medical team—they all seem like fine people. As I said, we have met many of them at many conferences and seminars. They seem just fine, but when it comes to reports, then I do not know how a doctor can see somebody for five minutes and assess that he is this or that, his back is never going to get better or it should have been better in six weeks.

We get that, whereas I have our own specialist or the worker has his specialist who may see him on a regular basis after he has been referred by the family physician. I suppose the family physician always gets reports from the specialist. He should. I know mine gives all kinds of reports. The family physician can tie in his home life with the problems that he is having. I do not think a specialist has a real vested interest in the guy per se because he only sees him on that rare occasion for that particular injury and he assesses that injury.

I have never seen a report that says that the medical consultant at the board has seen this man, has examined him and said, "Here are my findings." It never happens. Therefore, the guy has to be sceptical. I am sure the companies are sceptical too. It is dollars and cents, I guess. That is what this boils down to: dollars and cents. We are all looking for a fair shake. We are just saying that we believe the man's personal physician and/or specialist is the person who can best assess what is wrong with the injured worker. I do not think a five-minute or a 10-minute assessment by a doctor at the WCB would be any fairer than his own specialist or a specialist that he has been seeing.

Mr. McGuigan: You mention the loss of holiday pay and pension rights and so on and the person would give those up when he took rehabilitation or reinstatement or another job with another company. Certainly I am not an expert in that field, but is it true that there is no portability of pensions in Ontario?

Mr. Smart: Yes, for legislation that came down in June 1987. But I am talking about right now. I am talking about workers who have been out for quite a while. Some are trying to get back in and will come under the legislation anyway.

I will give you an instance. I have a fellow, a Mr. McKenzie, who has been with Woodbridge Foam for 10 years. When he reaches 65, he will be able to get a pension. There is also a permanent total disability pension written into it, but you have to be with the company for 15 years. Of course, we are in negotiations to try to reduce that, because 15 years is totally ridiculous. I know that most collective agreements that we have, other than what the legislation says now, are for 10 years. If a person has been with the company 10 years, then he may get a permanent total disability pension.

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I have more than just one person—I mentioned him specifically because I was just talking to him this morning before I came—and there is just no way the company is going to bend over or break the agreement and say, "Okay, we've got a problem here in our plant in Woodbridge and, yeah, we had better do something for these people." A small amount of money is better than nothing.

Here is a guy who has got over 10 years. He has lost not only 10 years of pension rights, but he will get a basic pension when he reaches 65, which right now, for them, is \$150 a month. He has got to look for a job. He is 56 years old. His vacation, which would have been three weeks, not a lot of time, but he has to start earning that all over again. He has no more leisure time. He has got to work from day one.

The benefits, OHIP, Green Shield and prescriptions all paid for, are gone. That is our fault: in collective bargaining, we should have taken care of it. At the same time, I think it is the government's fault. They should have taken care of it too, through legislation to the WCB. He should not just be cut off now.

This particular injury, which, in his case, is a back injury—whenever it relates to the back, then it is paid for; I realize that. But there are a lot of other things out there that are not paid for, that previously he was enjoying and today he is not, and 10 or 12 years' seniority is a lot for anyone to have to give up. In iso cases, this is what is happening. This is definitely what is happening.

Mr. McGuigan: My original point, though, is that there is some portability in pensions.

Mr. Smart: For those who qualify, yes. In Rosedale.

Mr. Carrothers: I wonder if I could just circle back to the discussion on the doctors, because I was curious about the discussion that was going on.

It has been my experience, if a medical determination is being made—we are obviously going to be talking about a difficult case now, if we have got some real disagreements—that many opinions are received, and usually it is a summation of all of those that is what makes the determination, not just one person's over another's. It is kind of everybody's is in the pot, and the fact that a doctor who is treating the particular injured worker knows that is usually factored in, and that opinion has often, in my experience, been one that has given great weight.

But it seems to me the sections here that are talking about the panel and the ability to choose a doctor from the panel are aimed at the situation where you get an impasse. You get this weighting of the doctor for the worker and his points of view and then you get some others that perhaps do not agree, and you have now got an impasse and a way of breaking it. It seems a sensible one to me.

I am just wondering how else you might solve the problem. You have got to break this deadlock, if you will. You have got to get an impartial person to perhaps add his opinion into the pile, which would then swing the pile one way or the other. I am just wondering how else you might handle the situation.

Mr. Falconi: Mr. Carrothers, if I may answer that, in the insurance

programs employers and unions have throughout Ontario, there is a provision in them for dispute settlements. In that case, there is a mutually agreed third party. What we have at the board level now—we do not have that report. The mutual party is a self-serving person who works for the board, who is going to be implementing board policy.

Mr. Carrothers: But the proposal is, I think, to give that kind of third-party impartial person. The point I am making is that Bill 162 contains provisions for a panel of doctors, one of whom the worker then chooses, who will become the independent medical opinion. That seems very similar to what you just suggested is in the bargaining agreement. It seemed to me such a sensible proposal. That is why I am wanting to find out from you what you think its weaknesses are.

Mr. Smart: I guess it sounds like we are sceptical of all doctors. Of course, we are not. But, as an example, we worked very hard to try and find an agency that was going to be thorough in their investigation, particularly medically. We found the Ontario Workers Health Centre, and these doctors were specialists in a particular field. I keep going back to isocyanates sensitization, but these people know the chemicals in the plant. It is awfully difficult, unless we can see a panel of doctors who say what their specialist field is, because you have to do that.

It would be nice if we could, I guess, have different factions, I suppose, one that is good with bones or one that is good with head injuries or whatever. If we could pick a panel in that respect, it might be a lot better. You could say that we have so and so, a specialist who is renowned in his field, and we certainly would not challenge that. Then we find out that a résumé on this person really has not been geared to an injury within the plants. He has never seen how foam is made before. He has never seen what a worker has been subjected to.

The doctors we have been using, I would say, if you want to use that terminology, have been in the plants. They have had a look. They are well versed on all of the chemicals that are being used, in all of our plants at least, and in the other plants they also are looking after as well.

This is what we find is to the injured worker's benefit. We do not go to him and say, "Hey, I want you to write a report that's going to be so glowing that we can't lose at the board." That does not happen. We cannot influence them that way. But at least when you go to talk to somebody about toluene diisocyanate, the guy knows what you are talking about and says, "Yes, here's what I'm looking for," and when he takes his tests, he knows exactly what to look for. That is why we have been doing it this way. We have been directing our people, or giving them the option, let's put it that way, because they want to know too.

The more educated the workers have become this last few years, certainly the more they have found it to be to their advantage that there is a doctor who knows exactly what is in the workplace, at least the workplace I am representing.

It is so much easier, and when I call people at the board now and they say, "Oh, is that from doctor so and so?" and I say, "Yes, it is," they say, "Yeah, I know him well." They have also had to investigate themselves. If a panel of doctors or—you can do that. Sure, it is going to be expensive, but if you do that, that is what we are looking for.

Mr. Chairman: I think we have run out of time. Mrs. Sullivan had a short question, which will elicit a short response, we hope.

Mrs. Sullivan: Thank you very much for this brief. I particularly appreciated, by the way, the emphasis you placed on safety in the workplace at the end. This question is really short, but I want to clarify the response earlier to Mrs. Marland's question. Mr. Falconi, when you responded to her, were you really saying that the return-to-work rights should be subordinate to collective bargaining? Was that what you were talking about? You got the benefits in there as well.

Mr. Falconi: Yes. There are two issues, though, one of benefits and one of return to work.

The return-to-work provisions that are outlined in this agreement, quite frankly, scare me in our collective agreement. We have evolved that language over 40 years and there are no guarantees that language will prevail in the current legislation. It says the employer may offer, and I am just simply saying to you that if an employer wishes to create a controversy, or take it that there is an avenue for him to notify the union that from this day forward our past agreement is superseded by the legislation and therefore—

Mrs. Sullivan: Your view is that it should be the other way around?

Mr. Falconi: My view is that there should be guarantees in there that the language that is existing and past practices are going to supersede if they are better than the legislation. Right now, that is not in there.

The other point I would like to make in relation to this is that upon return to work, an employee could find himself in a nonunion job and a surplus declared very shortly thereafter.

Mr. Chairman: Mr. Falconi and Mr. Smart, thank you very much for your presentation.

The next presentation is from the Board of Trade of Metropolitan Toronto. I think Mr. Albinson is here. It is good to see you again.

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BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Albinson: Thank you. With me today are David Brady and Bruce Waechter.

Just by way of an introduction, I want to thank you on behalf of the committee for the opportunity of putting forth our views on this critical piece of legislation.

The Board of Trade of Metropolitan Toronto is the largest community board of trade or chamber of commerce in North America, with in excess of 15,750 members.

We have provided copies of our presentation to you in advance. I believe you received them on February 27. I will ask Dave Brady if he will just highlight some of the major points in the brief. We will not go through it in detail.

Mr. Chairman: Okay. Thank you very much.

Mr. Brady: Looking at Bill 162 as a whole, I think our major point

is that it seeks to redress something that presently does not work. The existing single award, permanent disability award system needs an overhaul. It has not worked, in anyone's eyes, for a long time. I think one of the things that underscores the need for Bill 162 is in Professor Weiler's 1986 report, with his reference to what happened in permanent disability pensions from 1979 to 1985. They doubled. They went from \$250 million to \$500 million, and that is in constant 1985 dollars so it is not because of inflation. That is in a situation where lost-time accidents had not increased to account for that increase.

Weiler's conclusion, and the only conclusion you can reach, is that the board was more ready over that period of time to make these awards. In doing that, at the same time the question is, has that amount of increase more fairly and more justly compensated workers? The Board of Trade of Metropolitan Toronto does not think it has. You have a large increase on the one hand, and you have workers not being better served over that period on the other hand. To us, this means that of necessity something has to change. Weiler's basic analysis, going back to 1979, has been thorough and has been updated and completed through subsequent reports, such that the bill in our view pretty faithfully reflects his analysis, and we support that.

The centrepiece of the bill is the dual award system, but we read the bill altogether. We see the dual award system as something that operates in conjunction with mandatory Workers' Compensation Board rehabilitation requirements. That is necessary and is part and parcel of the dual award system, as we see it. It is important and we endorse it. It is also important that this bill contain reinstatement and re-employment rights for workers. That is a piece that must be placed together with the dual award system and WCB rehab obligations.

Putting the bill altogether, we see that it does strike a balance between workers and employers, and we see that it does place the WCB in its traditional role as having to administer the act. What the bill does in its positives—I know you have heard a lot of negatives—is it says that those who can work will be given the opportunity to do so and the incentive to do so, as we read the bill, and those who cannot work due to a workplace accident will be fairly compensated.

Stepping back from the framework, as to how we see the pieces fit, we have a couple of things to say on the noneconomic pension, the section 45 proposals. One that is very basic is that section 45 is all premised on medical assessments, and as you read each section, subsection, subsection, subsection, it is all triggered on medical assessments.

What we say, though, is that when you go through each of the subsections, it has to be very clear that if the focus is medical assessments, when the bill talks about "consequences" and about a worker's "condition," it ought to very clearly say "medical condition" and "medical consequences," so that you do not have ambiguity on either the worker side of the question or the employer side of the question, or what they jointly think is the proper interpretation of that section. So if it is medical, let us say it is medical. We do not think it does that entirely as it sits now and we have made some detailed proposals to you.

The second thing is this: I know you have heard a lot about the Workers' Compensation Appeals Tribunal and its role and I know the minister made a January 19 press release, but when we look at the bill, we think there is a lot there to applaud the original version in terms of what is appealable to

WCAT and what is not. Let us focus on the noneconomic, because as I heard earlier, we are dealing with medical assessments, with doctors' opinions.

If you have the first opinion, being the WCB opinion, that is a starting point. If that is criticized or there is a concern raised, there is the chance in the bill for a second opinion going to a non-WCB government roster, as I think was mentioned earlier. To us, that is a balance and a fairness and an ability to get some objectivity beyond a one-opinion deal. All of us, if we have some serious medical problems, want to have a second opinion. It seems to us the act ought to say the same thing. But to add a third level, which would be a WCAT doctor, what we are doing then or what might happen then is we are adding layers of medical assessments, one upon the other.

If it is doctor versus doctor, assessment versus assessment, then I do not think that does much for the credibility of the system as a whole. In the board's view, the WCAT doctors being the last-word doctors may well undermine all that has gone on before such that the WCAT is making the determination of the noneconomic pension, because it sits in the last seat as far as appeals are concerned, whereas the bill says it is the board's determination with second-opinion rights. We see that as having a balance and we see layering medical assessment upon medical assessment, not to preclude, by the way, worker medical opinion from experts who are familiar with the workplace—nothing precludes that but it simply says second opinion, and that is the final answer.

Moving to reinstatement and re-employment: We agree in terms of what the substantive rights are. However, we have some suggestions with respect to the "how," and the "how" is very important. You heard just a minute ago representatives from the union at, I understand, Douglas Aircraft. They were concerned about collective bargaining rights. To us, that highlights the "how" and not the "what." We have the same concerns by the way, and we would like to express them to you by referring to page 12 of our brief. I will not go through the words, but I want to go through with you the points that these words try to express.

First, right now the act says that if you are temporarily or permanently disabled, you have compensation that is a function of your level of co-operation. That is what section 40 says and that is what section 45 says. It seems to us that reinstatement and re-employment rights would be exactly the same thing, a function of co-operation, such that the employer's obligations run and continue to run, but to the point, as sections 40 and 45 presently say, that someone can determine whether there is a lack of co-operation. If that is the case, then all the employer's efforts cannot overcome that and there ought to be some recognition of that in the bill.

Second, the Legislature is now looking at a bill with respect to the Occupational Health and Safety Act. That is not this forum; it is another forum. But it is clear that those obligations, as far as employers are concerned, are onerous and quite rightfully so.

In terms of an employer doing what is required of it to take every precaution reasonable in the circumstances, it seems to us that the employer ought to have whatever information may be available to assist in placing the worker in situations that will not in any way jeopardize that worker's health and safety or anybody else's in the workplace. So we make a proposal here that when this bill is looked at, it is looked at as a companion. In other words, you look at it on a broader ground by taking into account other legislation and other initiatives that are going to go before the House.

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Third, Weiler said that when someone has a right to reinstatement and re-employment, he ought to be able to exercise that right by being able to do the essential duties of the job. Essentially, that is in the bill as it is framed. But I think it ought to be very clear that the worker ought to be presently able to do that, meaning that after a familiarization period, after an orientation back into the workplace, that is fine, but it does not extend into a trial period of some unknown duration or a training period.

If you say "presently able," that means no trial, no training, but yes familiarization, yes orientation. I think you ought to address your minds as to what it is you do mean in the bill. We would suggest that if you use the words "presently able," that will do it.

Comparable job: What does comparable job or comparable work mean? We went to the pay equity legislation to find out what a job class was because a job class is defined there. It is going to be very difficult to sort out what comparable work is. It is going to be one of these questions you are going to have four appeals on. Why does the bill not say "similar duties and responsibilities, requires similar qualifications and has the same compensation schedule, salary grade or range of salary rates as the position the worker held on the date of injury," using something that already has some measure of acceptance? That is in clause (c) of our proposal.

As to our clause (d), the way the bill works right now, in the sense of what we read, the obligation to reinstate and re-employ appears to be absolute and it only becomes less if the worker is unable to perform the essential duties of the same or a comparable job. It does not say, and in our view should say, that the work has to be there; in other words, continues in existence. The work has to be necessary.

I do not think there is in this bill the thought that work has to be created beyond the needs of the organization, and I do not think it does anybody any good as far as the worker is concerned in terms of the dignity of work and being placed back in the workplace to be employed doing unproductive work. We suggest the work must be continuing in the sense of its need in the workplace. That is our clause (d).

Clause (e) deals with collective bargaining. There are employers that have 20 bargaining units and great numbers of trade unions—if you are talking about pay equity, one establishment—all within one employer's organization. To have competing employee rights where someone can bump someone else out, without recognizing that someone may go from one trade union into another and cross these lines where there are things that are very important to the trade union movement, such is seniority—as far as the employer is concerned, where the employer says, "Senior employees have skill, ability and experience," that is something that needs to be protected too.

We suggest that the bill be reviewed in the sense of various bargaining units, because that does not seem to have been given thought to in this section 54b. We also suggest that seniority be the touchstone because it gives some sense as to an ordering as between employees.

The last thing we will say to you—I hope we are not abusing your time—is that one of the things in the bill as presently set out is that reinstatement and re-employment is one of the things that does not go to the Workers' Compensation Appeals Tribunal. We think that makes some sense and at page 15 we say why. Let me just briefly go over that with you.

Point 1, reinstatement and re-employment do not concern a worker's entitlement to compensation. It has nothing to do with compensation.

Points 2 and 3, I think, tell you the problems the Board of Trade of Metropolitan Toronto has with the "how" as far as reinstatement and re-employment is concerned. As the present system works, going to the Workers' Compensation Board and appealing there takes some time. People are critical of the time it takes, but obviously it takes time. It may take up to six months or longer.

You layer upon that another appeal level. You can go to the WCAT's annual report and if you ask the question, you will find that it takes about six months to have a case heard there from beginning to end and there are cases that go longer. So you start layering appeal levels on top of each other. You think about competing employee interests as to who has the right to this scarce job between, perhaps, two injured employees, or the very senior 20-year employee as opposed to the 13-month employee. You have, I think, a situation in the workplace that has the characteristics of instability.

There are employee relations problems, as I think you can imagine. There are labour relations problems if you do not sort out the bargaining unit thing. To have all these layerings and to try to get to a final answer maybe two years down the road, the horse is well out of the barn and the damage, I think, is difficult to control.

The last point: In structuring the bill, you have been careful to use the words that you find in the Human Rights Code about essential duties and you have been careful, I think, in the sense of reasonable accommodation, having the thought that there is reasonable accommodation, recognizing that "handicap," as defined in the code means, "An injury or disability"—this is included—"for which benefits were claimed or received under the Workers' Compensation Act."

If you have reinstatement and re-employment, which is fully appealable to the Workers' Compensation Appeals Tribunal and you have exactly the same types of things in terms of handicap, essential duties, reasonable accommodation under the Human Rights Code, what you have done is say to a worker, "We are going to confirm your substantive rights." That is fine. The board of trade supports that.

What we are concerned about, though, is saying that the substantive rights can be followed in many forums: human rights inquiry under the WCB legislation; perhaps under a collective agreement for just cause; perhaps under the Occupational Health and Safety Act, because there may be something there for a worker alleging that the job has been lost because of recriminations, because the employer has reacted to a complaint under that legislation; you could have the Ombudsman involved. When you begin to think of the legal processes here, you begin to see five or four or three tracks that can all be run in parallel and can come to hearings.

What we ask you is this: If it comes down to, for example, human rights and the Workers' Compensation Act, and if the issues are the same, does it not make sense that the substantive rights are protected by saying to the worker, "Take your choice but do not go with both"? You will see that there is something in our submission that tries to address that.

With all that talking, rather quickly I have come to an end.

Mr. Chairman: Thank you, Mr. Brady, for the presentation. Mr. Wildman has a question or a comment.

Mr. Wildman: Thank you, Mr. Brady. I apologize for being late but I cannot control the weather.

I was interested in one particular aspect when you were talking about reinstatement and rehabilitation, and that is your suggestion that there should be some provision in the act. First, let me say I have some sympathy with your suggestions about the changes you proposed, to make it possible to ensure that the worker in fact gets work that he or she is able to perform, but I am concerned about your view that there should also be provision in the act stating that somehow work must be available. That anticipates, in my mind, the possibility we have now in my part of the province, where we have mainly resource industry and heavy industry, where the employer says, "Well, we would like to give modified duty to this worker as it has been recommended by the board and/or his physician, but we do not have any available, so goodbye."

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Mr. Brady: I think there is an answer, Mr. Wildman. One, I understand modified work to be different from light work, because when I look at this, it is essential duties and reasonable accommodation, so it means the work is a job that has some productive qualities to it required by the organization. That is one thing, to make the distinction between light work and modified work.

The second thing is it seems to me that as long as that work is available—I think you are perhaps talking about layoffs and people who are out of work because the same number of jobs does not exist—and as long as that work does exist, even though there is the shrinkage, then there would be a right, again depending upon seniority, in our view, to have that injured worker reintroduced into the workplace.

We see that happening, but we do not see work created as a result not of the organization's need but of the legislation.

Mr. Wildman: Or the worker's need.

Mr. Brady: Or the worker's need. There has to be a balancing of the interests such that the jobs are there. You see, I think what the bill has to anticipate is that between the time the worker has an injury and the time the worker may be able to come back, which could be six months or whatever, that employer and that organization, with all of its employees, may have suffered some setbacks and there may have been some reorganization within. In other words, the organization is in a dynamic process. Nothing is static. If the bill recognizes the dynamic process, that is fine. If it anticipates something that is static, then you are into work creation and something that is artificial, and that is what we want to ask you to avoid.

Mr. Wildman: I understand what you are saying and I accept your concerns about seniority. We have had that raised with us by members of the labour movement.

Mr. Brady: Right.

Mr. Wildman: Let's say that in a dynamic situation, to use your phrase, the market has dropped and there have been layoffs; I understand that.

But what if, hypothetically, the market remains good and an operation is continuing—there have not been layoffs; perhaps there has even been some expansion—but we are in an industry that does not have light duty or modified duty work?

Mr. Brady: My answer to that is that I do not see the bill as requiring light work, which would be the creation of a job that otherwise would not exist. I see the bill talking about the essential duties with reasonable accommodation, which is what the Human Rights Code would require in any event. That is what the bill is speaking to. I see a distinction and I want to be clear: Light work is not what we understand the bill to be directed to.

I will give you an example. If you were thinking of the Metropolitan Toronto Police Force and the complement was supposed to be 5,000 uniformed people, you would expect them to be in the cars and on the street to serve and protect. If the bill were considered to be one that absolutely and unqualifiedly gave police officers injured in the line of duty rights to their employment, they could not be in their cars and on the streets. You still have a complement of 5,000. You might only have 3,000 active constables. You might have a number of others who would not be able to do the job if your focus was light duty. If the focus, however, is essential duties then I think the 5,000—to use my number—in terms of cars, police work, active investigation and whatever they do would be carried on.

Mr. Wildman: I do not want to get into a debate with you, but I think you have chosen a poor example. I would suggest that with the Metropolitan Toronto Police Force there are also other essential duties, such as community liaison work and so on, to which constables who are injured in the line of duty could be transferred. In that situation, I think the bill would require that a constable who is able to do these other essential duties be reinstated and rehired, and trained if necessary, for those other duties.

Mr. Brady: You and I, I think, are agreeing with respect to what we are saying, if both of us are talking about essential duties. We do recognize that for any worker's job within any organization, if the essential duties of the job are the touchstone, we are totally in agreement. If it is not, then I think we are in disagreement.

Mr. Wildman: I think we are in agreement with regard to your example. Where we run into difficulties is when we are dealing with, say, mining or something like that where you can have only so many people working in the dry, cleaning up or whatever, and the person may not be able to return to production work underground. The question then arises, does the employer owe that worker some other kind of job?

Mr. Brady: I think the answer has to be "essential duties." The way the bill has been structured, I think that is well understood by that terminology, as opposed to what you are suggesting, that employers have some absolute obligation for light work, which we see as an entirely different question.

Mr. Wildman: I am not suggesting that. I am suggesting perhaps retraining and moving into some other field completely.

Mr. Chairman: I think Mrs. Marland has a brief question.

Mrs. Marland: Mr. Brady, thank you. This is a very excellent brief.

I think it is one of the best we have received. It is very concise and I personally find it really informative. Somewhere in the brief there may be the answer to the question I have. I realize you have highlighted it. You stated that you did not think the injured worker should have access to recourse through two acts at once, namely, this act, Bill 162, and the Human Rights Code. You did not, however, comment on the conflict between those two acts, should this go through as it is, in terms of the 20 employees. I wondered what your membership felt about that.

Mr. Brady: The 20 employees is the line of demarcation where a worker may have the double track, which is what we are concerned about, and if under the 20 there would be the single track, which is the Human Rights Code.

The substantive rights are in existence on both sides of that demarcation line. To the extent that a worker is protected on essential duties and reasonable accommodation, I think that is a universal protection. This is my personal view, because we have not gone through this to give you the answer perhaps as categorically as we would like. But I do not think the Workers' Compensation Act, beyond providing the obligation to reinstate and re-employ, does much more than the Human Rights Code does in the first place.

Whether you are on one side of the line or the other, we think that as long as there is one process and not two, the substantive rights are essentially the same.

Mr. Chairman: Mrs. Sullivan, do you want to wrap this up?

Mrs. Sullivan: I had a very short reaction, really, to the section of your report where you talk about reinstatement and re-employment. You suggest that the words "presently able" be incorporated.

Although I have not been able to attend all the hearings so far, I have read every intervention that has come before the committee. One of the things that struck me about every other intervention, really, was the emphasis on both vocational and medical rehabilitation.

One of the things that has also become very clear is that both employers and workers have the object of having the worker return to the same job if possible, and where that is not possible most employers have indicated they still believe it is to their benefit to have the worker who is familiar with the products, with the processes, with the rules and regulations and so on, return to that company, where there still is a value and a dignity in the work they can offer to that company.

I am really quite astonished that you want "presently able" included and suggest that perhaps retraining, which is a very clear part of rehabilitation, ought not to be part of the spectrum for reinstatement.

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Mr. Brady: I guess the answer is that the rehabilitation and the reinstatement and re-employment sections in the bill are separate and distinct and they are identified in their own order. Your point deals with own job or alternative work, comparable work. In our brief, going on to page 13, we indicate that where the conditions set out are not met, "the employer shall offer the worker the first opportunity to accept suitable employment that may become available with the employer." In other words, if you cannot do the essential duties of your job or a comparable job, there is then—which is the

design of the bill as it presently stands—the obligation for the employer to offer first opportunity for suitable work other than if the essential duties cannot be performed for own job and alternative comparable job.

In our explanation we did not cover that section because we really made no recommendations with respect to it. It will just follow along as it does, as the bill is presently structured.

Mr. Chairman: The next presentation is from the Provincial Building and Construction Trades Council of Ontario. I believe Andrew King is here. I recognize that face. Welcome to the committee.

PROVINCIAL BUILDING AND CONSTRUCTION TRADES COUNCIL

Mr. King: I would like to start by explaining why I am present and Mr. Duffy is not present. Mr. Duffy was fully expecting to make his presentation. Unfortunately, last week he had to undergo very serious surgery which has kept him hospitalized. It was the hope of the building trades council that its president, Trevor Byrne, could appear in Mr. Duffy's place and make the presentation. Unfortunately, Mr. Byrne himself has been suffering from ill health and was required to go into hospital this morning.

I initially approached your clerk with a request that our appearance be postponed, so that at least Mr. Byrne could attend, but I understand certain exigencies that you have, shall we say, rather thoroughly debated have already determined that it is not possible.

Mr. Wildman: We continue to debate.

Mr. King: I suspected that might be the case. That being the case and because of the importance of the issue you are dealing with, I have been asked by the building trades council to make the presentation.

You do not at present have a copy of our presentation. It unfortunately got tied up with the problems with the illnesses of the two officers. However, a sufficient copy will be supplied to you before the end of this week if the machines work properly, by Wednesday I suspect.

In any event, what I would like to do is address a number of issues that we consider to be of particular importance and that we would like you to consider. Because you do not have a copy of the brief to review while I make my short presentation, I am going to initially indicate to you what areas I would like to touch upon.

The first area will be a relatively brief one and that is the continuation in Bill 162 of the maximum ceiling for earnings that are covered by compensation. It is our position that given the restrictions on benefits that already exist, i.e., that it is a 90 per cent net, etc., a maximum ceiling is inappropriate. As you can well imagine, it very adversely affects a very significant number of our members who are fortunate enough to have earnings, especially right now, that are in excess of the maximum. What that means is that for the injured construction worker, not only is that person restricted to 90 per cent of his net income, but he does not even get that because of the significant loss due to the maximum.

Second, I would like to address the whole question of the dual award system. I should say as a matter of fairly important observation that we at present have a dual award system. We have always had a dual award system. I

suspect, regardless of whether Bill 162 goes through or some other form of legislation goes through, we will always have a dual award system.

I take the position, and it is the position of the building trades council, that the issue is not whether there should be a dual award system; the issue is what form it should take. I would like to look first at section 45 and what is now being called the noneconomic loss portion of the dual award system. The only difference between the new proposals and the present system of permanent disability award is the amount of money that the injured worker receives. There is no difference in its structure other than you are going to permit an outside doctor to apply the meat chart as opposed to restricting that solely to the doctors who work at the board.

If you look at it, there is still going to be a reliance upon a permanent disability chart or meat chart, and we have every reason to believe that it will be continued to be applied in the same fashion as it has been in the past. The only difference is the amount of money that you are actually putting into the system to generate a permanent disability award.

We take the position that, since the permanent disability award has always been expected to reflect solely the loss of functional ability of the worker, to reduce the amount of money that the worker receives for that loss of functional ability is completely without merit. There is no evidence to suggest that worker is overcompensated by virtue of receiving compensation for a functional disability. That would be the only justification to take away some of the money the worker receives. Who this particularly penalizes, of course, is the worker who does in fact return to work.

I would suggest to you, if you have not already seen the historical material that is behind our present compensation system, that we now have a permanent disability award of the kind we have because of the realization that without providing for such an award, there was a major disincentive to rehabilitation. Workers who were able to return to work in their old jobs or at similar employment with similar wages were at a severe disadvantage, because they received no ongoing compensation for the pain and suffering they went through at work, the loss of future advancement and the restrictions they had on their own circumstances and their own situation at home.

I strongly urge you to reconsider that portion of the bill that essentially will cut back substantially the benefits received by injured workers who return to work. As I say, there is absolutely no evidence to support that those workers are overcompensated. I suggest to you, without any hesitation, that a worker who returns to work with a back injury and a 10 per cent monthly award and continues to make \$30,000 or \$40,000, maybe even 50 per cent more than before his accident, is entitled to continue to receive that compensation, that 10 per cent disability award, because it represents the functional limitation, the functional loss due to his accident at work.

More important, however, is that portion of the bill, section 45a, dealing with the future loss of earnings. At first glance, the proposition is relatively attractive, because it appears to be for the first time including without hesitation consideration of a number of factors that for a long time the trade union movement has been saying should be part of the calculation of a pension.

The consideration of actual earnings, personal and vocational characteristics and prospects for rehabilitation have always been weeded out of the determination of the award received by the worker, except in the

supplement provisions. As you are well aware, given the recent changes in the board's interpretation of the supplement provisions, those considerations have even less weight than they did before.

However, there are a number of very serious problems that cast doubt on the possible success of these provisions. First, nowhere does the legislation say that these future wage-loss benefits are permanent benefits. In fact, the expression used in subsection 45a(2) is that these benefits shall be paid "for such period...as the board considers appropriate in the circumstances."

I know that you have heard and will continue to hear complaints from trade unionists about the discretion given to the board. I can think of no better example of how terrible the discretion can be than this particular provision. That is a completely arbitrary provision that potentially denies workers who have permanent disabilities the right to continue to receive adequate benefits for their disability. It is simply inappropriate. That is in addition to the reviews after two years and five years that are also provided for.

It is, I suggest to you, a fundamental principle of our compensation system, and should continue to be a fundamental principle, that workers are guaranteed permanent benefits for permanent disability. That indeed was the entire focus of workers' response to the whole plan of reform of workers' compensation, ever since 1979.

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Second, it is not clear from the legislation that there will be reviews of the entitlement to future wage-loss problems for workers who, at the time of the initial assessment, did not have an actual wage loss. The review must apply to all permanently disabled workers, and there must be an obligation on the board to follow up even in those circumstances where at the initial review there was no apparent future loss of earnings. Circumstances can change over time.

However, the most important reservation we have with respect to these provisions is the whole question of what is suitable and available employment and the whole problem of deeming workers to have the employment of jobs that do not exist. We suggest to you as a fundamental proposition, both in this section of the act and indeed in the reinstatement provisions of the act, that there must be continuing full benefits until a worker actually has suitable employment.

While, as has been previously mentioned, there may be a test of co-operation that has a place here, that is, if a worker refuses a job that is suitable and actually available, as even Weiler acknowledged, in those circumstances it may be appropriate to take that into account and reduce the level of benefits.

If you cannot say there is a job actually there that has been offered to the worker, in our submission the benefits should not be reduced. We are very afraid that that is exactly what will happen. It will be even more devastating for workers than it is under the present system, because the future wage-loss benefits system contemplates three reviews. It does not contemplate the same degree of intervention by the board as the present supplement provisions provide.

When this is connected to the restrictions on rehabilitation, and

particularly the restrictions on the length of time rehabilitation is available to workers, it is going to create more and more workers who are deemed to be able to do a certain type of employment but whose benefits have been reduced to the point where they are shifted on to the welfare system. This, in our submission, is completely inappropriate and would have a devastating effect on injured workers. It has the effect of transferring the cost of the disability perhaps from employers, but directly on to the backs of the workers and of course on to the welfare system, where workers will end up with this formulation.

I think this is particularly important if you expect the vocational rehabilitation system to work. What is the incentive to vocational rehabilitation? Returning a person to work. Why else do you do vocational rehabilitation? If you do not have an obligation on the person providing vocational rehabilitation to ensure that there is a job there for the worker to return to, your incentive for vocational rehabilitation itself is extremely weak.

Add that to the board's policy of restricting the availability of vocational rehabilitation and what you have is a vague promise that will have no substance in the long run. If you want the system to work, if you truly do want permanently disabled workers to return to work, then the system must provide adequate rehabilitation and assistance up to the point of returning to work.

In response to the vice-chairman's earlier question about what you do in a situation where you have a resource-based industry that may not have light work, in the construction field where the building trades work, that is a real problem. We have to admit that there simply is not a lot of light work available, and in our submission there is a responsibility on industry to provide rehabilitation and employment in those circumstances.

It may be inappropriate to impose upon an individual employment situation that that accident employer actually provide another job. It simply may not work; there may be problems. But the industry as a whole has that obligation, which is why we take the position that the legislation should make clear that you cannot reduce benefits until suitable employment is available. We believe that will have the salutary effect of protecting both the worker and also industry, because if, as has been suggested, industry does want to re-employ these workers, this provides an additional incentive to do so.

I have already commented briefly on the question of limitations on rehabilitation. There are also limitations on the availability of supplements for people looking for work. I suggest to you that the whole question is being approached backwards by section 45a, because there seems to be a rush, if you will, to assess this worker in what would appear to be an almost permanent disability state: you know, to make the determination and get on with it.

I think the only way in which you can really deal with that is to make it clear in section 45a that the assessment has to be timed to fit in when not only the rehabilitation has been completed, but there is a determination made as to the work being available. That has been suggested. It was part of P.C. Weiler's recommendations in the first phase of Reshaping Workers' Compensation for Ontario.

It has been recommended a number of times by various academics that if you are going to have a projection of a future wage loss, the best time to do that is when you have made your efforts to rehabilitate and you have actually

got the type of job that the worker can return to. That gives you your best perception. If you do it any time before that, you are guessing. One person's guess is as good as another person's guess, but it is also different.

If you implement this system as presently constructed, without making it clear in the legislation that the work has to be there, what you are doing is creating monumental injustice, because worker A goes in door A and gets one determination, is deemed to one kind of job; the same worker, with the same problems, can go to somebody else, another adjudicator, and can be deemed to a totally different type of income. You are eliminating any sort of equality between workers in these circumstances, because you do not have an objective standard by which to judge. I think that is another part of subsection 45a(2) which is disastrously lacking.

I think also that one indication of our concern is perhaps best shown by subsection 45a(4). That is the provision that deals with the minimum amount of benefit to be paid to the 55-year-old worker. If you look at subsection 45a(4), it says that the minimum amount of compensation payable under this section to a worker, who is at least 55, has not returned to work and is unlikely to benefit from vocational rehabilitation, is equal to old age security. That is what it says.

Our position is that, if section 45a was working correctly in the way it suggests it should work under subsection 3, that worker would be getting a 100 per cent pension. Because you have considered his personal vocational characteristics and determined you cannot rehabilitate him—he does not have a job, no reasonable prospects for a job in the future—why is that worker being told that he has got minimum protection of old age security? He should be receiving full benefits if the system does work the way it is held out to be. It is only because there is no objective standard, only because there is no obligation to make sure that the work is actually available, that such a provision is even considered.

I would like to touch briefly on the retirement portion of the benefits, section 45b. Our concern is that the amount of money generated by the provisions will be so small that it will guarantee that many permanently disabled workers will spend their later years on welfare. Given the reduction of income which the workers suffer as a result of all the limitations on their compensation benefits, it is our position that it is appropriate that permanent disability benefits continue after the age of 65 and not be converted into a pension.

My last comments will be with respect to reinstatement rights. This, of course, is something which is of great importance to us because construction workers are excluded from its application. Our position is that simply because the employment of construction workers is somewhat different than industrial employment, there is no reason to exclude them entirely from any protection to return to their jobs.

Our submission is that where a worker, as the result of an accident, has to go off a particular job, that worker should have the right to return to that job if the job is continuing when he is fit to return to work. The position we are advocating to you is to consider that there should be a prohibition against layoff due to work injury.

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We acknowledge the fact that construction operates through a hiring

hall. We acknowledge the fact that not all work that is available continues from year to year; in fact, some jobs are relatively short. However, we are also conscious of the fact that there is a great deal of construction now that goes on for an extended period of time and there is no reason that a worker who has to go off work because of a disability should not be able to return to his job on that work site if the construction work is still continuing.

We also are concerned about the arbitrary limitations that have been placed on reinstatement rights and would ask you to consider what has already been mentioned with respect to appeals and delays in getting matters resolved. We are concerned that reinstatement rights will be lost if a worker exercises his right to appeal about a right to reinstate, because the limitations are strict and arbitrary. There is no exception apparent anywhere in the legislation. We are concerned that if any worker raises an objection to being told he cannot be reinstated that right will be lost, because by the time the appeal is determined, the time limit will have expired.

The Acting Chairman (Mr. McGuigan): If I can just interrupt. I do not know where you are in your brief, but we are getting very close to the end of your time.

Mr. King: Thank you. I am very close to the end of the brief.

We are particularly concerned with the question of reinstatement going into the regular system of adjudication and being caught up by the delays. We want an adjudication. We want a form of reinstatement rights to begin with, to have an adjudication; but we want an adjudication to be effective and we want it to be timely. If there is one place where time limits may be of use in this area, it would be time limits or obligations on the board itself or whoever you decide should be the ultimate adjudicator of these issues, time limits within which that body hears and determines the issues. We, of course, advocate that the appeal should go to the WCAT but, again, there should be time limits.

Given the other time limits, I will end my presentation with that.

The Acting Chairman: I hope members bear in mind that we started five minutes late and we are now 10 minutes late and we have a full schedule. I think I will just permit—

Mrs. Marland: We have not done badly then.

The Acting Chairman: No, but we do want to hear all the people. One short question from Mr. Carrothers, who is the only one who has indicated so far.

Mr. Carrothers: I want to go back to your comments on reinstatement, because that is a particularly thorny issue and a very difficult question to be fair to all parties in a situation where someone is injured. I guess we are all agreeing that the best thing to do is get the injured worker working; not receiving a pension but working. It seems to me that leads to the possibility that the new job might not be with the existing employer, and you were making the point about continuing to get a pension until the worker could actually get a job.

The rehabilitation portions of this bill would continue benefits when a person is undergoing rehabilitation. I am just wondering, in the situation you were talking about where the employer does not have suitable available

work—in other words, there is just nothing around that this worker could do; he needs to retrain for something else—whether the benefits would not be continued under the rehabilitation provisions of this bill and be there until such time as that employment was there. In effect, is what you are wanting not already in here?

Mr. King: The key part is the last part of what you were saying: Would those benefits not be there until the employment is there? The answer to that is no, based on both a reading of the legislation and the way in which the board presently is implementing rehabilitation policy.

You have two problems. First, you have the entry into rehabilitation, which is being itself restricted by the deeming approach and, second, you have arbitrary limits on the amount of rehabilitation they will give, which has nothing to do with whether there is a job available.

If rehabilitation is available to all injured workers who are unable to return to their regular employment and if rehabilitation exists and is available up until the point of return to work, I do not disagree with what you are saying. The fact is that it is not and that it is not required to be by virtue of the legislation.

Mr. Carrothers: In making that statement, are you talking about current practice or the practice that would exist once this legislation comes into effect? We are getting a mixed message. You are talking about how the board is currently dealing with rehabilitation and I think we all agree it is not doing well. A part of this is trying to improve that. You have a statutory right to it now and these kinds of things are coming into play. Would not the experience we now see in rehab change when this is there? I guess I still have the feeling it would and I am just trying to clarify how you feel it does not.

Mr. King: If it is the intention of this legislation to ensure the availability of rehabilitation to all workers and also to ensure that there is rehabilitation up to the point of actual return to work, I do not think it does that. I think it still leaves it open to the board. It requires the board to make inquiries, but it still leaves open to the board the determination that, "Well, we think this worker could do this job." It still leaves open deeming and as long as you have deeming available, you can avoid the rehabilitation route.

If deeming is not available, if you have to look at every worker simply on the basis of, "Okay, he can't do that job; we've got to try to find him other work that is actually available," there is a goal at the end of the road. If that were what was put in here and the language were clear to make that so, I think you would have accomplished the goal that you want. I do not think you are going to accomplish it with the legislation as it presently stands. I think you have to make that clear. The way to make it clear is to require that the benefits continue until there is employment.

Mr. Carrothers: What I seem to hear you say is more about the bona fides of the board's attempt than perhaps what this legislation is creating.

Mr. King: I think we have very good reason. The board will carry this out. I have dealt with the board for many years. When you look at legislation, you look not only at what it says but also at what the board will do with it. You have the board in 1987 saying that its interpretation of the supplement provisions is unlawful and it has to change it dramatically to a deeming system which no one had ever seen or heard of in this province prior

to that, except through legislative amendments. You have to look at it.

Then we look at the limitations on rehabilitation where there are no limitations whatsoever in the act as it presently exists. The board could be doing what you are suggesting it do or what you want it to do, but it chose not to, so I am afraid you have to look at that. That is why you hear from us the concern about discretion. We have a long history of dealing with the board.

Mr. Chairman: Thank you very much, Mr. King, for your presentation.

Is there anyone here from the United Food and Commercial Workers International Union? If no one is here from the food and commercial workers, I think there is someone here from the Canadian Manufacturers' Association. Am I correct? I wonder if they could come forward. We have Mr. Robb and others. If you would make yourselves comfortable and introduce yourselves to the committee, we could proceed.

CANADIAN MANUFACTURERS' ASSOCIATION

Mrs. Caldwell: I am Barbara Caldwell. I am the vice-chairman of the Ontario division of the Canadian Manufacturers' Association.

I would like to introduce my colleagues. On my far left is Jim Robb, who is the supervisor of workers' compensation at Dofasco Inc. On my immediate left, Pierre Chabot, who is the compensation and safety manager at Dylex Ltd., and on my right, Ron Franceschini, who is the salary services manager at Stelco Inc.

I think you have our information.

I would like to read a short opening statement and then, as you have not had a submission previously, perhaps just summarize it and then be happy to answer questions.

The Canadian Manufacturers' Association is a voluntary association whose members produce approximately 80 per cent of the goods manufactured in Canada. Although the CMA represents manufacturers of all sizes, the majority of CMA members have fewer than 100 employees.

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The Ontario division of the CMA welcomes this opportunity to provide comments on Bill 162. The CMA has had a long tradition of involvement in the improvement of workers' compensation and health and safety in the workplace. In fact, in 1912 the CMA made a submission on the implementation of workers' compensation in Ontario, the first jurisdiction in Canada which passed an act concerning workers' compensation.

At that time the CMA proposed an employer-funded system that would compensate workers for work-related injuries regardless of fault. The CMA still supports these principles today. However, in practice the workers' compensation system has deviated from these principles and this has resulted in a situation that is totally unacceptable. The costs on employers are extremely onerous and the system is not operating to allow for, or even encourage, a worker's speedy return to work. Changes to the system are necessary.

Consequently, the CMA is supportive of the intent of many aspects of

Bill 162. The system must be designed to rehabilitate the injured worker, both medically and vocationally, as quickly as possible. This would encourage the worker to return to his or her job or other appropriate work without undue delay. Therefore, the CMA supports Bill 162's initiatives in this area. However, the employer must be provided with the necessary information regarding the worker and the worker's condition to assist in the worker's return to the workplace. Bill 162 should provide for this.

The CMA also supports in principle the dual award system, as it compensates a worker based on wage loss while still providing for pain and suffering. This results in fair compensation awards to the worker.

There are, however, some problems with the bill, as outlined in the following pages. What I would like to do is just summarize, so that we do not have to go through each paragraph.

Cost: The government has stated that Bill 162's impact will be revenue neutral, but it has not provided any costing studies to demonstrate this. We would like some assurance that Bill 162 will indeed be revenue neutral in practice as well as in theory.

With regard to maintenance of benefits, the CMA supports the intent of the maintenance of benefits for workers injured at work. However, we have some concerns about smaller employers and would like some exemption in this area.

Maximum earnings ceiling: Our only concern in that area is the length of the phase-in period, and what we would like to recommend is that it be phased in over a five-year period.

Noneconomic loss: The CMA, as I have said, supports the dual award system, but we would like to see specialists invited to assess the degree of impairment. We would also like to state that we feel that physicians should take only the medical consequences into account. Employers also should be able to have the assessment reconsidered if significant improvement to medical condition is witnessed as well.

In the area of wage loss, we also favour that system. However, more certainty is required as Bill 162 allows for too much speculation regarding future wage loss. We have concern in this area. Speculation as to what might be is not acceptable, and we would like to see employers having some input into what other factors may be considered.

With regard to retirement income, we oppose the inclusion of retirement income under workers' compensation in any form. We think it is inappropriate and that retirement income should derive from other sources.

I guess the area where we feel most strongly is vocational rehabilitation. The CMA has long been a supporter of early vocational rehabilitation and, consequently, supports Bill 162's intent in this area. It is essential that the rehabilitation process commence as soon as possible. It has been shown that the longer injured workers are away from the workplace, the less likely they will be to return to their previous position or, for that matter, to any employment.

We would like to see both the employer and the worker committed to the rehabilitation process. Since the employment relationship is a continuing one, we feel that the participation of the employee is essential. If that commitment lags, then the obligation to the employer should also be relinquished.

With regard to reinstatement, we support the intent of this section, but we have concern about the absolute terms as stated in the brief. There cannot be reinstatement if there is no suitable work available. Bill 162, we feel, must take both employee and labour relations into account.

Bill 162 should also be drafted to take the Human Rights Code into account. The Canadian Manufacturers' Association feels that workers must be required to elect how they will proceed with a claim for reinstatement: that they will either elect the Workers' Compensation Board or the Human Rights Code but not both.

That is a summary of our brief. We would be more than glad to entertain questions.

Mr. Carrothers: In the brief, on page 2 you mentioned cost and wanting some guarantee that these changes would be revenue neutral. We have seen this type of system adopted in a couple of other provinces which undoubtedly your organization has members in. I am wondering if the experience of your members in those provinces—Saskatchewan and Quebec are the ones that come to mind—has shown that this type of change increases costs. Or is it something broader, that we have an ageing workforce and the types of problems you are going to see in on-the-job injuries are simply going to get worse as a result of age?

Mr. Franceschini: We have not, as an association, done very much work in the way of looking at the other areas, but there does not appear to be any reduction in cost in the other areas with the dual award system.

Mr. Carrothers: The point I was making is that I do not think there has been an increase in cost, either. I think indeed the changes have been revenue neutral. I just wondered if you had evidence from those jurisdictions where these changes have taken place that the change has caused costs to go up. My understanding is that it has not, either up or down; that it has indeed been revenue neutral. I just make that point as perhaps a suggestion that maybe the concern is not as strong.

Mr. Franceschini: The difficulty we have as an association is that any time we talk to the board itself the term "revenue neutral" continually comes up. You really have a lot of difficulty saying it is revenue neutral when in fact costs have been continually going up. The term "revenue neutrality" presents a problem of how you really define it and whether you can come to grips with it.

Mr. Carrothers: I recognize costs are going up. It is anecdotal on my part, but it has been my observation that with the ageing workforce in the factories I see it is just sort of inevitable; when the average age of the workers is going up, perhaps injuries are going to go up. That may be as much an explanation as anything else for what is going on.

Mr. Franceschini: I do not know if that is a valid point. There is some feeling that during the downsizing term, when younger employees were unfortunately laid off because of downsizing, the claims experience actually went down, which would tend to contradict that statement that the older the workforce—

Mr. Carrothers: Perhaps there is an experience factor in there as well. More important, though, on rehabilitation, you brought up the point that you wanted it to work more quickly. I thought this was indeed accomplishing

that. I am just wondering how you might improve upon the requirement. Is it at 45 days that the board has to go out and look at someone and assess them right away? That is pretty fast. That is within a month and a half. That is possibly even going to be within a situation where the injury has not even settled down. I am just wondering how you could do this quicker than is actually being proposed or how you would make it more effective.

Mr. Chabot: The question, when we are talking about the speed at which it should be handled, is not only the time in which it should be assessed but also the time it should effectively, physically start and all the actors be committed, ideally at the time of accident but as soon as possible, all actors be involved and all actors have all the information available; which at this point in a number of cases is hard, specifically for the employer to get the necessary information from the board in order to assess the necessities in what, as an employer, you have to do to reinstate them.

Mr. Carrothers: The point may be, then, to include the employer, because it seems the other pieces of the system are engaged within 45 days. We might say 40; we might say 35; it becomes very arbitrary. A month and a half is pretty quick. I guess the point you are making is that the employer should be included in that; that would be the improvement you seem to seek. Is that what you are saying?

Mr. Chabot: Included, and have all the necessary information at hand.

Mr. Carrothers: I have heard that point before.

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Mrs. Marland: Good morning, Mrs. Caldwell. At the top of page 3 you are getting into the assessments and the dual award system. You are saying that the medical practitioner responsible for assessing the degree of impairment must be a specialist with the requisite expertise. We had a presentation earlier this morning suggesting that a personal physician and a personal specialist might have more expertise than the board physicians.

I am just wondering what the CMA's comment might be on that vis-à-vis the fact that obviously the patient's history may be very significant in an injury sustained on the job. I am talking about the patient's physical history in that example, but also about the family situation, other factors that may contribute to a psychosomatic aggravation of an injury. What you need, in fairness to the injured worker and to the employer, is a very accurate assessment. Has the CMA considered whether that accurate assessment might be better done by someone who really does know the patient?

Mrs. Caldwell: I do not know the CMA's position. Ron and the others may.

I think one of the concerns I have as an employer is the adversarial nature of all this. I think that is a point well taken. If the board and the employer can be comfortable that the information that has been given is appropriate and suitable, that certainly is pertinent information. Anybody else?

Mr. Chabot: I think one of the points in there also, when assessing the need for a specialist, is to have, for lack of a better term, a list of physicians cognizant of all the rules and realities of the workers' compensation system, which could go through also by experience.

Also, to answer your point regarding the history of the patient, it is something that can be passed on from one physician to the other, so that there is one person who knows the ramifications of the entire system who can make the decision, although that historical file on the patient can be transmitted from the family physician to this specialist who has to make a decision.

Mrs. Caldwell: If I might just add to that, I wonder, by having physicians specifically appointed by the board, whether they are more cognizant of the rules and regulations of workers' compensation than individual physicians. There may be a way to educate physicians in that regard.

We have had situations where our employees have been recommended to the Workers' Compensation Board by their doctors when in fact it was not a workers' compensation case. That has created great financial distress for employees when they have indeed to pay back the money they received from the WCB. So there may be an education process also involved.

Mrs. Marland: It is also interesting when you learn that the board medical staff are not necessarily experts in the workplace either. It is really a dichotomy here of what would be the greatest benefit to the two parties, the injured party and the employer. Obviously, if the board staff are not familiar with the workplace, when they are trying to assess whether that injury has been aggravated by a workplace environment with which they are not familiar, it is sort of reaching out into Alice in Wonderland a bit.

One of the important points you are making here is about the assessment process, in terms of once it is made, who can ask for a reassessment. Since a compensable injury is obviously based purely on the assessment, the assessment becomes very critical. You say here that the original assessment should be able to be reconsidered by employers. It is also possible that an original assessment should be able to be reconsidered by an employee too. In fairness to both parties, would you like to comment on the fact that this bill only permits two assessments for that injury?

Mr. Robb: Really, the medical aspect of it is something that can only be determined by the doctor. I feel that right now when the employer sees that a recovery has indeed been made, there is no way of going back and having an evaluation. The overall feeling is that once there has been an obvious recovery that has not been recognized in the original assessment, the employer as well as the employee should have an opportunity to require a reassessment. Really, that is the bottom line as we see it.

Mrs. Marland: Do you think that the injured worker or the employer should be limited to the two assessments that the bill now permits? Once they have had the two assessments, bang, that is it right now.

Mr. Robb: I think the two assessments would probably be adequate in that the assessments are not conducted until such time as the medical diagnosis has indicated that the condition has become static. If the assessment is made prematurely, yes, there could be a lot of room for movement, improvement or decline in condition, but I feel if the assessment is made at the appropriate time, it could probably be done accurately.

Mrs. Marland: I thought the assessments have to be completed within the first 18 months.

Mr. Robb: No.

Mrs. Marland: Okay.

Mr. Chairman: Is this not for the permanent—

Mr. Robb: Not for the permanent. The impression I have is that the medical doctor, the specialist, will indicate when the assessment is appropriate, based on his knowledge of the condition, and when he or she feels that the condition has become static, there would be a recommendation for an assessment.

Mrs. Marland: What you are asking for, if there is a change at any time in the future, you would agree that either party should be able to ask for another assessment.

Mr. Robb: That is correct.

Mrs. Caldwell: We would like to see the process of being able to be revisited if there is a significant change one way or the other.

Mrs. Marland: That is what I feel. The limitation on the number of assessments is not in either party's best interest.

Mr. Robb: We do not think so, no.

Mr. Chairman: Mrs. Caldwell, on page 1 of your brief, third paragraph, you say that the CMA "supports these principles," and I think they are the principles of work-related injuries and no fault. In the next sentence you say, "...in practice the workers' compensation system has deviated from these principles." I think the two principles are no fault and work-related injuries. I am wondering, are you talking about work-related that the system has deviated from or the question of fault?

Mrs. Caldwell: The CMA certainly supports the fact that an employer-funded system would compensate workers. Of work-related injuries, I think the concern perhaps is determining whether it is a work-related injury and what kind of compensation and for what period should be allowed. I think the primary concern of all of us, both as members of the CMA and as employers, is getting that employee back to work and doing it in the least adversarial way that we possibly can, and anything that can be done in this bill to ensure that I think is a very positive step.

Mr. Chairman: I just did not understand where the board was deviating, where the system is deviating from those two basic principles.

Mrs. Caldwell: From the no fault and the work-related injuries?

Mr. Chairman: Yes.

Mr. Franceschini: Basically, the CMA, in looking at the number of claims that have gone up over the years and the fact that, particularly when you are into nontraumatic—I think is the word—types of injuries, the difficulty is trying to really determine what was the cause of it. Was it work related or was it in fact something that may have happened over the years because somebody happens to have a particular medical problem? It may be hereditary; it may be almost anything.

The difficulty employers have is how to really know that particular item happened at work, whereas when you cut a finger or break a leg at work, you know that it actually happened there. There is no argument about it.

1130

Mr. Chairman: Would you agree that cuts both ways, that people can end up with cancer that was caused on the job but there is no way of proving that either? It cuts both ways. People can have work-related problems and not get compensated for them and they can have non-work-related problems and get compensated for them.

Mr. Franceschini: Yes.

Mr. McGuigan: On the first page of your brief, in the second to the last paragraph—and you are not the only group that has said this—you say, "...the employer must be provided with the necessary information regarding the worker and the worker's condition, to assist in the worker's return to the workplace." I just want to step back a little bit from that and sort of put on the record that we live in a mix of a free enterprise system and a socialist system.

I think all of us would agree we have a mix of that. The question we always argue about is where the line should be, and that of course will go on for ever. Looking at the free enterprise side of it, which I wanted to see you come from, we believe in certain common law rights, such as the right of enjoyment of our property. I guess we usually say our home is our kingdom. It strikes me that if you were to ask for the client's professional information, if you were to ask for that sort of information, you would also be subject to being asked for all the internal documents you have within your business which you regard as pretty much private matters.

What I am coming at is it is a fundamental principle. Would you be willing to give up your fundamental principles in order to get this information, and is it really that necessary? Sure, I would admit that it would be quite convenient for you to have that information, but is it that necessary to have that information in order to comply with the idea of getting the people back to work?

Mrs. Caldwell: What kind of information specifically were you referring to?

Mr. McGuigan: I do not know what you are referring to, but you say that you want medical. I would think you would want all the medical information that presently, under our system, is private between the doctor and his patient. You would be asking for that information in order to get the worker back to work, perhaps to modify the worker's work and so on, but workers presently are pretty reluctant to give up that kind of information. Certainly doctors are reluctant to give up that. There is common law and there are statutory laws that say that is privileged and private information.

Mrs. Caldwell: I would think that, in order to determine the cause of and perhaps the rehabilitation program that would be appropriate with any workplace injury, getting the employee's medical background would certainly be consistent. I have to smile a little bit when you talk about employers having to give up their private records. I do not know that employers have any private records any more. I think that government and other bodies have access to most of our records, certainly these areas. Again, I think it comes back to the fundamental principle of how can we most fairly treat both the employee and the employer and get that employee back to work, and that should be the goal.

Mr. McGuigan: The spring of the year is the time to do some gardening, I guess.

Mr. Chairman: I think it is appropriate to note that Mr. Wildman has a shovel with him and members of the committee have been suggesting for a long time that he should always carry one around. Sorry for the interruption.

Mr. McGuigan: I guess you have gone as far as you are going to go in answering my question. Is not having that information an absolute bar to getting that person back and properly at work? That is the basic question.

Mr. Robb: I could maybe provide a little more insight to that concern, sir. What is happening now is a supervisor may feel that due to the nature of the injury he feels his employee has suffered—after three or four or five weeks, he may say: "I have a modified job that I feel this person is capable of performing. Would you find out when this man is due back to work?"

We will contact the board, and the board will say, "Right now he has been referred by his family doctor to a specialist." The family doctor hypothetically has said that there is no more treatment necessary, but the worker wants to see a specialist before he comes back to work. Three, four or five weeks can be lost in that amount of time.

What we are suggesting is that if we had a better insight as to whether there is an important matter being referred to a specialist, such as, "We're not sure if the condition has healed, but we want to have more examination" or "There is further and ongoing active medical treatment," then we would say, "Fine, we don't want to touch that employee until he is ready."

But if we are getting vibes from the board that, "The latest doctor's report that we have on file says he is okay, yet he has been referred to another specialist," we are left up in the air. Three, four or five weeks can easily go by, during which time modified work could be put into place, but the person is not made available. If we had some idea, we would know whether we should be pursuing it or not. We do not want to pursue it if it is not practical.

Mr. Chairman: I think Mrs. Sullivan wanted a supplementary to that.

Mrs. Sullivan: Yes, it is a supplementary. I am interested in knowing the kind or the depth of information you are looking for. I assume that you would want some of it partly in the case of a modified job, but I assume also that an employer would find the information useful if participating in the design of a vocational rehabilitation program. But it seems to me that you do not need the full medical report. What do you need?

Mr. Robb: We need, more than anything, an explanation of the active medical treatment that is being participated in. If we are satisfied that the injured employee is actively involved with either rehabilitation or active treatment, then that is an indication to us that the person is probably not ready to come back to work. But if we are given the impression that there is nothing going on right now, we are just waiting for doctors' reports to be submitted to the board, then we would probably be in a position to say, "Fine, have the doctor review the modified job that we have available and let's get on with productivity."

Of course, with productivity comes rehabilitation, because the faster the injured worker returns to the job site, the faster the rehabilitation

program actually begins for his welfare. We do not need a detailed diagnosis, in my opinion, but we do have to have an appraisal of the medical treatment that is being pursued or that is being recommended for that particular employee.

Mrs. Sullivan: And time lines.

Mr. Robb: That is correct.

Mr. Chairman: If there are no further questions, on behalf of the committee, thank you, Mrs. Caldwell and your colleagues, for your presentation this morning.

In view of the fact that I do not believe the United Food and Commercial Workers International Union is showing up this morning, that concludes this morning's hearings. We will reconvene at 2 p.m. this afternoon in this room.

The committee recessed at 11:39 a.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

MONDAY, MARCH 20, 1989

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Council of Ontario Construction Associations:

MacDonell, George, President

Sweica, Carmer, Manager, Corporate Risk and Employment Programs, Lackie Brothers Ltd.

Gifford, Les, William Mercer Ltd.

Frame, David, Executive Vice-President

Individual Presentation:

Fink, Richard A., Barrister and Solicitor, Fink and Bornstein

From the Ontario Automobile Dealer Association and Toronto Automobile Dealers' Association:

Davis, Bill

From the Rubber Association of Canada:

Ardanaz, Teresa, Adviser on Workers' Compensation

James, Brian, President

Pennycook, Dave, Manager, Planning and Financial Analysis, Uniroyal Goodrich Canada Inc.

From the Law Union of Ontario:

Wilson, Wes, Workers' Compensation Collective

Anderson, Ian, Workers' Compensation Collective

From the Canadian Auto Workers, Local 2213:

Kryzaniwsky, Cheryl, President

Mancuso, Enzo, National Health and Safety Co-ordinator

Crocker, Jim, Workers' Compensation Board Co-ordinator

From the Canadian Chronic Pain Association:

Kryspin, Dr. Jan, President; Assistant Professor, Physiology and Rehabilitation Medicine, University of Toronto

From the Energy and Chemical Workers Union, Local 599:

Muzyliwsky, Leo, President

AFTERNOON SITTING

The committee resumed at 2:04 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT (continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The committee will come to order. Perhaps before we get into the actual presentation I could raise a matter with the committee members to deal with. I would appreciate your decision in this regard.

The Canadian Forces Reserves represent 6,000 people in Ontario. They are covered under the Workers' Compensation Act and they get paid small amounts of money for being in the reserves. They work on the weekend and so forth. Perhaps some of you know more about the reserves than I do. If they get hurt while they are working in the reserves, their compensation is based on the low income that they are due, because they are working only part-time for a few hours.

They have asked to make a presentation to the committee. Their submission was not in on time, we have nothing in writing from them, and they have been phoning and asking that the committee determine whether or not it wishes to hear from them.

If the committee feels there are enough people already on the waiting list that we cannot do this, that is appropriate. If, on the other hand, the committee feels that it is a unique situation and wants to deal with it, that is up to the committee. Any comments?

Mr. Wiseman: I just feel that they do represent a lot of people, but if we are going to open it up, plus the fact that these people did not have a submission in on time, we are leaving ourselves wide-open for a lot of criticism. I think I would just encourage them to send in a brief and we can look at it at some point in time, but not give them an audience here when we have so many waiting.

Mr. Dietsch: It is unfortunate. For example, we could have slotted them in today had they been here---

Mr. Chairman: We do not know that, though.

Mr. Dietsch: ---but we do not know that. I agree with Mr. Wiseman. Written submissions will certainly be given every serious consideration, as will the verbal submissions.

Mr. Chairman: Okay, fine. I appreciate the decision by the committee and I detect a consensus, so I will pass that on to those people.

We are prepared to proceed this afternoon with the Council of Ontario Construction Associations. Welcome, gentlemen, to the committee. I encourage you to introduce yourselves and proceed with your presentation. Please be relaxed and sit down and be at ease. We are not a very formal gathering here.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Mr. MacDonell: My name is George MacDonell. I am the president of the Council of Ontario Construction Associations. We are made up of some 47 construction associations, both local and trade, in the province and they represent about 12,000 employers or about 130,000 employees.

My colleagues with me today are Mr. Gifford, on my far right, who is an associate member of the actuarial society; David Frame, who is the executive vice-president of COCA, and our speaker today, Carmer Sweica, here on my immediate right. Mr. Sweica is the risk manager of Lackie Brothers, a major construction company in Kitchener, and he is also chairman of the COCA committee on workers' compensation. Carmer, would you like to begin?

Mr. Sweica: Thank you, George. Could we have the lights reduced, or is this light necessary?

Mr. Chairman: We can reduce the lights, yes.

Mr. Sweica: As George indicated, I am here representing the Council of Ontario Construction Associations, and we want to hit at three different subjects in this presentation.

One is fair treatment as far as reforms are concerned, and we will go into some more details as go along here as to what we mean by fair treatment for the worker in the sense that the worker should be looked after under the workers' compensation system. At the same time as the worker is being looked after fairly, we wish to have this system under affordable costs, and we will show that these costs are sort of running askew. In reference to the costs, we would like to present the fact that there should be some sort of accountability from the board in regard to the billions of dollars that go into the system. We want to present that as well.

1410

COCA, as such, supports the bill in principle. We think it is a good bill and have supported the Minister of Labour (Mr. Sorbara) on it and have told him so. But there are certain aspects of that bill we disagree with which will come into our argument here. The bill in a way reduces the unfairness to the worker. It is on the way to doing it now under Bill 162; in other words, we think that the workers will be treated more fairly now, especially the ones who actually need the benefits.

The other thing we are happy about in the bill is that it provides a commitment to vocational rehabilitation, which is very important as far as we in the construction industry are concerned, because we have had occasions where workers have been injured in our industry and it has been 14 to 17 months before they even got to the rehab stage. You have probably heard this story before, so I will not repeat myself here.

With regard to COCA's concerns about the current workers' compensation system, we feel that there is extensive reform that must come about, as we feel the system is unfair to many of the workers. The workers that are earning fairly good earnings and happen to be injured are at times getting more money than a person who is injured and is earning less money. We will show you a slide on that.

The third point is the costs. They are rising uncontrollably, and we

will show you where they are. This is one of our concerns, because we do believe in a fair system, but if the costs are not under control, then we have a problem in the employer community as well as in Ontario.

This slide indicates on the solid blue line, for the period 1965 to 1987, the number of incidents per 100 workers in the construction industry in comparison with the red line, which is the other industries in Ontario. You will see that there is a downward trend in the number of incidents, very dramatic from 1965 to 1987. As I said, that solid line is the construction trade, which we think is a very good trend. We are not happy with that, because we think we can do better, but we are on the right track.

This chart indicates to you the different industries in Ontario and a comparison of average change in compensable injury frequency since 1965. You will notice that construction, which we represent, has done very well in comparison with the other industries, the far right figure below the line.

Mr. Wildman: Are those figures just traumatic accidents, time lost, or are they any reported incidents?

Mr. Sweica: Compensable injuries, which is lost time.

This chart represents a problem we have in the construction industry which is unique compared to other industries in Ontario, in the sense that most of our unionized contractors have to go through union halls for their employees, like millwrights, iron workers and so on. It means that when a worker gets injured, we have a heck of a time trying to find work for him or modified work because on your other job site, the job could be over and there may be no jobs there available for him, but he is still part of the union hall.

This is one of the reasons why you see that the construction industry claim duration moved from 29 days in 1969 to almost 102 days in 1987. We do not like it. I do not think anyone does like to see these workers on compensation not getting back to work.

This chart indicates today's level of injured workers' take-home pay plus workers' compensation with a ceiling of \$35,100 or \$36,600; it does not really matter right now. But it indicates to you that when we transform those 102 days into working days which represent the 20 weeks that he is off in our industry, the take-home pay of that particular person, with Workers' Compensation Board added on the right-hand side, the red slash marks, compared to a worker who is working 52 weeks of the year—what we are talking about here is take-home pay at the end of the year—there is a dramatic difference here in the sense that the worker who is injured is getting more money than the person who is working. Under the \$35,000 level there, it is about \$200 a month more.

Mr. Wildman: Would it be okay to ask a question? I do not quite understand that last chart.

Mr. Chairman: For clarification, could you put that chart back on, Mr. Frame, please?

Mr. Wildman: Are you arguing that the green-slash-mark columns are take-home pay for someone who works 52 weeks or 50 weeks a year?

Mr. Sweica: Yes.

Mr. Wildman: The red slash marks are a combination of what?

Mr. Sweica: The 20 weeks being off and compensation.

Mr. Wildman: When he gets 90 per cent?

Mr. Sweica: That is right, plus working another 32 weeks; in other words, his take-home pay for the year.

Mr. Wildman: I do not quite understand. If you are getting 90 per cent for 20 weeks, how can that, combined with the other 30 weeks, be more than what someone gets who is getting 100 per cent for 50 weeks?

Mr. Sweica: I will let Les Gifford answer that.

Mr. Gifford: There is a change in the marginal tax rates over the year. He gets a refund on his taxes at the end of the year.

Mr. Wildman: Because WCB benefits are not taxable?

Mr. Sweica: That is right.

This chart indicates, in the black or blue, the construction industry on the average cost per worker since 1971. That is the total assessment divided by the number of workers in the industry, as compared to the nonconstruction industry, which is in red. Notice---and we are talking about costs---the dramatic increase in cost since 1983 and 1985 up to 1987. They are just jumping up. Yet, as I indicated before on one of the charts, the incident frequency is going down. The other one is just going up the other way, which does not make sense to us.

1420

Mr. Chairman: Are those constant dollars?

Mr. Sweica: No.

Mr. MacDonell: We will come to that in a moment.

Mr. Sweica: Could we go back to the same chart? I just want to point out one thing on this chart. Do you see that slope of the line? It indicates costs will double in about four years.

Mr. Chairman: I am sorry. Hansard cannot pick you up without the mike.

Mr. Sweica: The chart indicates, in the slope of the line, that the costs will double in four years' time, the way it has been going in the last number of years, and that is frightening.

This chart gives you an indication of the 1988 cost per worker in the building and construction industry for employers across the country. I think that chart is self-evident, that we have the highest cost in Canada per worker, which the employer must bear.

Mr. Wildman: Is that all costs or just WCB?

Mr. Sweica: WCB costs.

This chart refers to the unfunded liability per worker in Ontario. You have heard about the unfunded liability, I am sure, but we want to put it in a graphic form. Per worker in 1977, it was \$367. In 1987, it rose to \$7,928. That is total dollars. The slash marks in 1987 indicate the constant dollars, up to the line. Even at constant dollars, it is ridiculous the way it has gone up. Les Gifford is indicating to me it is about 10 times the cost in constant dollars, of the unfunded liability. Our concern is, where is it going? When is it going to stop?

This chart indicates the average cost per injury, with the construction trade in blue versus the nonconstruction industry; average cost per injury, workers' compensation. Here again, the slope of the line is going up quite rapidly. This is the cost of the serious injuries.

Here is another revealing chart: the number of incidents versus the benefits paid out by the WCB in constant 1977 dollars. To the left, you will note that there were around 40,000 incidents in 1977. In 1987, there were about 33,600. So it is about the same in number of incidents. But let's look at the benefits on the right-hand side. They have almost doubled in that same period of time, and that is in constant dollars as well.

Miss Martel: May I ask what that includes? Does that include pensions as well or just lost-time benefits?

Mr. Sweica: It includes pensions.

Miss Martel: Do both figures include pensions?

Mr. Sweica: Yes. So that is quite dramatic, especially when the incidents are about the same.

Mr. Gifford: I point out that those are benefits paid in the year, monthly pensions, that sort of thing. They are not a capitalized pension.

Miss Martel: I was wondering if you were only including lost-time benefits in there or if it was all the benefits that were being paid out.

Mr. Wiseman: Could the reason there be that you are having more serious accidents and fewer minor accidents that may keep a person off for a short length of time. Your accidents are coming down, but are they becoming more—

Mr. MacDonell: Mr. Wiseman, I would like to answer that because I have looked into this question. When you see that sort of curve, the first thing you would conclude is that the construction industry is having much more severe types of accidents. At the moment, we do not have an exact figure. We could not bring it to the hearing today because it is not available to us, but we hope to get it soon. However, we have looked at the total severity of the Workers' Compensation Board accidents during this period, and they are down slightly. They drop about one per cent per year. Overall, the decline is down.

In order to get an answer to your question, I took great sheaves of workers' compensation figures and looked at them by accident and by age group. Our injuries are following the decline of the total and are perhaps slightly better, and they are almost all soft-tissue and back injuries. The number of fatalities in construction and the number of really serious lost-time

accidents, where there is traumatic loss of limb and so on, is declining very sharply.

The total incidents you saw earlier are down 15 per cent, and not only in absolute numbers, but the number or the severity of the accidents is also declining, but not as sharply, of course, as the total number of incidents.

Mr. Sweica: The Council of Ontario Construction Associations has these five recommendations, which I will go through one by one.

Mr. Chairman: We want you to do that, but just a reminder: Because of our scheduling, we have allotted half an hour to each group, and that can be taken up by the presentation or the presentation and an exchange with members. So it is entirely up to you.

Mr. Sweica: What time do we have, Mr. Chairman?

Mr. Chairman: Until about 25 to three.

Mr. Sweica: Vocational rehabilitation: we recommend establishing an effective program of vocational rehabilitation, which is vital to reforming many of the shortcomings of the present system.

The bill's provisions for six-week and six-month reviews represents a minimum acceptable standard. Some injuries require rehabilitation to begin within days for effective recovery. The board should establish a timetable for rehabilitation, based on the type, nature and severity of the injury.

Rehabilitation will only be effective with the full co-operation of the medical practitioner, the employer and the worker. The act should obligate the worker to co-operate with the agreed-upon rehabilitation program.

Reinstatement: Construction is exempt from Bill 162's reinstatement provisions because of the temporary nature of employment and the employer's lack of control over the hiring process. However, the Ontario construction industry has significant problems in immediately placing persons who are ready to return to work or in finding modified employment. Our ever-increasing average days on compensation illustrate this point.

COCA is working with the Workers' Compensation Board to develop procedures and initiatives to address this problem. We believe that two basic policies should be adopted in the unionized sector, and these are: (1) place a returning worker at the top of the hiring hall list, and (2) remove barriers between building trades unions so that workers with physical limitations can be given modified work within a different trade.

Assessment ceiling: The average pay for a journeyman in Ontario's unionized trades, before overtime, is approximately \$42,000. Wages in the nonunion sector are around the \$30,000 range. It is clear that the 25 per cent increase in the assessment ceiling from the current \$36,600 will impact mainly on the unionized sector of the industry. This will make it less competitive with the nonunion sector.

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Our gross earnings comparison illustrates that a higher assessment ceiling increases the number of workers receiving temporary compensation, leading to higher gross earnings than for those working the full year.

The Council of Ontario Construction Associations recommends that the ceiling remain at the current level.

COCA representatives have met a number of times with ministry representatives to discuss their concerns with the proposal in section 5a to continue benefit payments for up to one year after the injury.

In construction, unions and employer associations already provide for very significant funding of industry-wide, multiemployer health and pension plans. Those plans have for many years included generous benefit continuation programs during periods of disability or unemployment. It should be noted that those programs were developed by an equal partnership of union and employer trustees.

With these well-funded programs in place, it is our respectful submission that employers required to contribute to multiemployer health and pension plans be exempt from the requirement to continue contributions set out in section 5a of Bill 162.

If this is not done, employers will pay twice for benefits already provided. Because of the significant amounts historically allocated to benefits, employers will strongly resist future bargained allocations to benefits.

If subsection 5a(1) were to apply as presently drafted, the addition of further moneys to the benefit package could only result in greater unknown costs to individual employers for benefit continuation for injured workers. Thus, the established tradition of package bargaining would be jeopardized and a very real threat imposed on a relatively stable bargaining system.

We believe it is necessary for the Workers' Compensation Act to establish a higher level of accountability. Bill 162 places more administrative responsibility on a board that in the past has shown little ability to deliver the high-quality care and service it must now achieve.

Saskatchewan has established an independent review committee made up of representatives of various user groups. We recommend that a similar review process for Ontario be established in the act. A committee of management, labour and professional representatives should be struck every three years to assess the effectiveness of the system and its administration. The first review should focus on the effectiveness of the reforms contained in Bill 162. This process would make the Workers' Compensation Board more accountable to the users and would provide the minister and the Legislature with a regular, comprehensive review.

That is the end of our presentation.

Mr. Chairman: We know you represent a very substantial industry in Ontario and your brief has been received in keeping with that responsibility you have.

Mr. Dietsch: I wonder if they could leave a copy of their written text with us and then we could circulate it for further digestion.

Mr. Sweica: Yes, we have copies for you.

Mr. Chairman: Thank you very much.

The next presentation is from a gentleman not unknown to those of us who have been dealing with compensation matters over the years: Richard A. Fink. He is a solicitor in the city of Toronto, I believe. Mr. Fink, welcome to the committee. The next half-hour is yours.

RICHARD A. FINK

Mr. Fink: Let me just introduce myself by saying that currently our law office represents 80 employers in claim disputes involving workers' compensation. We also currently represent 15 workers in claims disputes regarding workers' compensation. Our law firm has been representing workers before the Workers' Compensation Board for 12 years. We have been representing employers before the WCB for approximately five years.

I think it would be fair to say that I and my partner have experience on both sides of what obviously is a contentious ledger in workers' compensation matters. Currently, of the more than 250 claim dispute files in our office, 90 per cent of them involve chronic pain syndrome. To define chronic pain syndrome very quickly, these are complaints of disability not indicated by the physical or organic disability that the doctors are finding in their examination.

My submission essentially is that the compensation board has been recognizing chronic pain syndrome as a condition for well over a year. The Workers' Compensation Appeals Tribunal recognized it earlier than that. Chronic pain syndrome and traumatic stress disorders have been with the compensation board and the medical profession for several years. Rather than the situation being ameliorated in the sense of regulations, statutes and board policies, the situation grows worse with each passing year.

My basic submission is that until the compensation board begins to take some cognizance of the problem, starts to deal with it in some meaningful way, there is not going to be any meaningful change. In fact, Bill 162, for a number of reasons I will get into, is going to make the matter worse.

In my presentation I have taken one file, an actual file and deleted any reference to the worker's name. I would like to go through it with you to illustrate specifically what the problem is. In my presentation, in the typed material, I have outlined this case.

The worker in this case in 1985 fell from a truck and injured his shoulder. On April 24, which was approximately six weeks later, his orthopaedic doctor could not find much wrong, but the worker was still complaining so he suggested the worker take it easy for a couple of months and then return to work. The new provision in Bill 162 that requires compensation intervention and vocational rehabilitation within 45 days would not have any appreciable effect on this claim at this point.

My view would be that a rehabilitation counsellor would come out in this 40-day to 50-day interval. He would be told by the worker that the doctor still says he should take off more time, and that would be the end of the statutory obligation.

The problem with the compensation board is not that it does not now have a statutory obligation to come out. The problem, as in this case, is that the board ignored the file between April and June. They did not open the file.

They did not turn their attention to it. It was just closed in the filing system.

In June and July, the worker goes back to his regular job. Currently, the compensation board has two ergonomists working on its staff for the entire province. I am told they will have 12 or 14 for the entire province some time this year. The worker goes back to modified work. No one comes out from the compensation board to determine whether the modified work the worker is doing or his regular work is suitable for his condition.

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The worker is unable to do the modified work; he has continuing pain. He then goes to a neurologist. In this file, the compensation board and the worker's treating physicians did three electromyogram studies in a period of 12 months. EMGs test the nerve pathways to see if they are working. You do not have to do three EMG studies; they do not change month to month. Each doctor did it without knowing the previous doctor had done one.

One wants to know why Ontario health insurance plan costs are going up; this file certainly indicates it. The employer in this case would have paid for each and every one of those EMG studies. I am told they are worth approximately \$600 each, including hospital space to do them in.

Each of the EMG studies in this case found nothing. This is in September. The neurologist says, "I think this man has a problem, but I don't know what it is." October to February: Based on the neurologists' report that they think the worker still has a problem, the compensation board again closes the file. This is a period of four months. Now, they are waiting to have the worker go to the Downsview Rehabilitation Centre. Downsview Rehabilitation Centre thinks there is not much physically wrong with the worker, but he is developing a chronic pain syndrome.

If the compensation board felt that mental problems were equally as valuable as physical problems, it would have tried to do something to treat the worker if it felt he was developing a chronic pain syndrome. If the worker were developing rheumatism or arthritis, they might suggest appropriate treatment; for workers developing chronic pain syndrome there is no treatment at all. The file is again put to bed.

The worker is then cut off benefits because there is nothing physically wrong with him. According to the compensation board, his problem is all mental. They cut him off benefits and suggest he return to work. The worker then appeals. This is a very large problem for employers. Employers are relying on the Workers' Compensation Board to take care of the file. Once the benefits are cut off, employers often will say, "Well, that's the end of the file." Workers, of course, can appeal. This worker appealed; he was put back on benefits.

The compensation board then asks itself: "Well, maybe he has a mental disability. Maybe we should have a look at him." More delay. The worker comes into the rehabilitation centre to be looked at again. Reports from the rehabilitation centre are ambiguous. An orthopaedic doctor at the rehabilitation centre, on March 24, 1987, says, "I can't find anything wrong with him, but he should do only modified work." This hardly makes any sense.

A compensation board psychiatrist sees him at the same time. He says, "The worker is suffering from depression for a lot of reasons, so we will give

him psychotropic medication," which essentially means antidepressants. If the worker is suffering from psychological problems because of family problems, because of stress and strain from the accident, because of his age, etc., I do not see how antidepressive medication is going to make him a happy man and cure his problem, but that is a general opinion of board psychiatrists who see workers at Downsview hospital.

A psychologist is asked the question whether sending the worker for behavioural treatment—in other words, psychological treatment—would be of any assistance to this worker, particularly the psychological treatment provided by the Behavioural Health Clinic. The psychologist says, "I don't know very much about that treatment, so it is an iffy proposition whether he should get it or not," and that is the end of the psychologist's intervention. At Downsview discharge, they say, "There's no use sending him for treatment, because the psychologist wasn't very positive about the approach of the treatment." So that is the end of any treatment; they discharge him to take his medication.

The worker then goes on a job search for a while. He has no success on the job search. He has continuing burning pain in his shoulder. The compensation board continues now to pay benefits at 50 per cent, because it thinks he can go back to work. The compensation board believes that work is always the best treatment for injured workers. No matter what the condition, if they only get back to work, it is going to help. Enshrined in Bill 162 is this view that if we get them back to work, we are going to solve the problem.

I do not know if you have ever seen an injured worker with chronic pain come into your office. They move very slowly, they grab their backs, they show a great deal of pained expression on their face, which is also my expression when I deal with these files. The compensation board seems to think that if the board doctor at Downsview sort of shakes your hand and says, "You're all right, you can go back to work," the worker is going to be standing up straight and he is going to be as happy as a lark and is going to march off to work. This is the height of stupidity. If the workers has—

The Vice-Chairman: If I could interrupt for a moment, Hansard has some difficulty picking you up when you stand up, dramatic as it is.

Mr. Fink: If the the remarks were missed by Hansard, posterity will live without them.

I think the point is that it just does not make any sense. If you have seen injured workers with chronic pain syndrome, you can tell them yourselves that all the doctors think there is nothing physically wrong with them. Unless they are malingerers, which we see very few of in our office—in other words, they are just faking purposely to get benefits—telling them they can go back to work does not solve the problem.

The board's behavioural clinic was finally sent to after multiple appeals by the worker's representative. The behavioural clinic said, "We think we can help the worker." That recommendation is passed to the compensation board doctor. The compensation board doctor said, "No, let's increase his medicine. Give him psychotropic medication. Increase the strength. I do not want to send him to the behavioural clinic," even though the behavioural clinic stated they thought they could help him. The board psychologist, who did understand the behavioural clinic, made a recommendation in the file to send the worker there again. The board's medical consultant again nixed that approach and said, "No, I do not agree with it." That was the end of any treatment.

Finally, the employer discovered that there is a bit of a game going on. If you can provide the worker modified work, even if it is sitting at the office counting the holes in the tiles, you can get the worker off full benefits. It allowed the worker to come back to work to answer the telephone to take customer complaints. If you have ever seen someone suffering from depression, you can imagine that this would be a great job. Suffering from depression, you can come in and take customer complaints, "Hello, what can I do for you?" This is not the type of person you want in customer complaints. A person suffering from depression is not going to last very long taking customer complaints.

The worker appealed, saying: "I should not have had my benefits cut off. The work was not suitable. No one ever considered the psychological problems I have had since the accident." This worker was a truck driver for 24 years without any lost time, with the exception of one month for an accident four years previously. The worker appealed the benefits. Eight weeks later there is still no response from the Workers' Compensation Board to the appeal. That is up to the present date.

On the next page, I tried to analyse the cost of what is going on. One can see that one is not making any friends here. In terms of the worker, he is not very happy with what the board is doing. The employer is not very happy with what the board is doing in this file. The file has gone on for three years.

Under the current situation, the costs of the claim are analysed and the total on the second page is \$195,000: there are five years of benefits and there is a five per cent organic pension because one orthopaedic doctor, since he cannot find anything physically wrong, just guesses that the worker has bursitis. Ninety per cent of the time, the possibility of bursitis is good enough for a small pension. There is a 10 per cent chronic pain syndrome pension. Eventually this worker will get something for chronic pain syndrome because there are about 15 reports in the file that say he has psychological problems.

The total cost is \$195,000. The worker is never treated for his mental problems. Now it is too late to treat him for his mental problems because behavioural rehab can generally only help within the first two years of disability. He has lengthy periods of physiotherapy. He has had more physiotherapy than Wendell Clark of the Toronto Maple Leafs, with no success.

Under Bill 162, a five per cent pension is now worth approximately \$4,200. One year's total benefits, because of the compensation board's new act, will now have a one-year ceiling, \$30,000. Six months' benefits, because the number of benefits can be increased past one year, we will assume at 50 per cent, is \$7,500. Then there is his wage loss. We do not have the guidelines for it, but assuming they are going to be comparing office pay with truck driving, the wage loss will have an amortized value of \$45,000. This will be a total cost of \$82,000. However, if the mental disability is accepted, the cost is \$307,000 because now the worker cannot do office work and he cannot do truck driving. He has a very large disability.

However, the point of the matter is that on the bottom line, which is satisfaction of the parties, whether it is the worker or the employer, who is going to be happy? The worker is going to be getting, under this wage-loss provision, about \$5,000 per year. The employer is going to be paying \$5,000 per year under NEER, the new experimental experience rating plan, which the compensation board uses in the truck driving industry. You almost pay dollar for dollar; there are very severe penalties for these types of claims.

The employer will be paying out \$5,000 a year. His position will be: "This worker is a bum. Why are we paying \$5,000? He doesn't really want to work. There's nothing much wrong with him: a bit of bursitis. Why can't he drive a truck?"

The worker's position will be: "I'm getting only \$5,000 a year. I'm getting another \$5,000 from Canada pension plan. How can I survive? How am I going to take care of my kids on \$10,000 a year?"

How can we have a system in this province that pleases no one? I am certain you have seen the retinue of employers. I saw the last people from the Council of Ontario Construction Associations; they did not seem too pleased. I am sure you have had the workers here; I know they are not too pleased. It pleases no one, it spends billions, it changes the law every three years; that has been the current pattern. I have provided you with a copy of my newsletter from a year and a half ago, because all the criticisms in the first article—which Teresa Ardanaz, who now works as an employers' consultant, guaranteed me would be taken care of within the next year and a half—remain outstanding. It pleases no one. How can it exist?

My rhetorical submission to the committee—although I know you will not implement this, because your mandate is to pass the legislation—is to not pass the legislation. Tell the board to clean up shop under the current legislation, which it could, then come back and tell us what amendments you need to make the system work better.

Current staff at the compensation board cannot nearly deal with the current legislation. How are they going to deal with amendments? The situation will be thrown into utter confusion.

Let me just make one additional comment to you. I do only two areas of law: rent review and workers' compensation. With rent review, the entire legislation was changed because both landlords and tenants did not like it. They changed the entire legislation. They are now 18,000 applications behind. My clients in rent review wait two years for determination, because the Rent Review Advisory Committee does not know what the law is and cannot interpret it. This is the effect of changing the law, making drastic changes, what it does to a bureaucracy that is not coping beforehand.

My submission would be: Do you think the board needs a few promptings in the act? Make them. Changing the law completely—which is what the wage-loss system is—in my submission will cause even more confusion among the board than it is labouring under now. Those are my submissions subject to your questions.

Miss Martel: On the final point, where you talk about making sure the people know the legislation, let me ask you this: Is it not true that the problem at the board, with or without the legislation, is that the board uses its policy mandate to make a lot of changes that we as MPPs do not have any control over? I am going back to, for example, the supplements policy 45(5) in 1987, the commutations policy in January 1988, and the new rehabilitation policy that came into effect in January 1989, which did not resemble changes in legislation but the board interpreting policy in any way it chose to do so.

Mr. Fink: Within the political context, I think the compensation board comes before the Legislature three times a year: once on the Ombudsman; once on their standard attendance; and once for legislative changes. Three times a year this committee gets some input into all those guidelines and regulations and laws the compensation board acts under.

My submission is that if you are not happy with what they are doing, are not happy with these various policies—and I am not—you at least make it known to them, that members of the Legislature, the particular committee struck, are unhappy for whatever consensus and other reasons are there.

The compensation board, in my submission, feels that this is a media relations game. I do not see them during this committee coming up and admitting that they are doing a lousy job at the moment and that the legislation is not their only answer. I see it now as your opportunity to make some comments on those policies.

The Vice-Chairman: Are there any other questions? I will ask one question. You may find it surprising, but despite the fact that you indicated that the mandate of the committee is to pass the legislation, the mandate of this committee, as I understand it, is to hear submissions and then to consider the legislation clause by clause and to either pass or not pass or move amendments. Is it your position that the bill must be withdrawn or that the amendments that are being presented by the government could, in fact, be adapted in some way by this committee to actually work?

Mr. Fink: There is only one other industrial state—when I say state, I mean state jurisdiction—where they have a wage-loss system and that is Florida. If the committee had the power, it certainly would be a nice time to go down to Florida now. Florida has had the wage-loss system for several years. One only has to go into the WCB library and read a report on the Florida system written by John Burton, who is the well-known commentator, in fact, one of the contributors to Weiler's report. Florida's wage-loss system is a mess. Florida blames the lawyers for making it a mess, because what the lawyers have done is, for each claim coming through with a permanent disability, the lawyers have litigated till the cows come home as to what the wage loss is.

At least under organic pension, you give me the disability and I could tell you today within three per cent of what the worker will get in terms of an organic pension. Under wage loss, how much is this worker with his chronic pain syndrome going to get?

In Florida, they litigate every last case there. They have contingency fees, etc., for lawyers, which make it a little more exciting and interesting for the worker's representative. The employers pay almost dollar for dollar there. The situation is backlogged. Cases are going every which way. Costs are rising. Worker discontent is also there. The wage-loss system in that one state has not worked as well.

My submission is, get rid of the wage loss. I know all the employer groups are all for the wage loss. They see, you know, this guy has come back to work and he should not get any money. This poor guy is out of work, he should get more money. The one state it has been in is an unqualified disaster.

The Vice-Chairman: Mr. Fink, they have also instituted a system in Saskatchewan, at least the government says, similar to what is being proposed here. Are you familiar with the situation in Saskatchewan?

Mr. Fink: I just read, in the last issue of the Canadian Occupational Health and Safety News—which is this little thing, published by Corpus Information Services, that comes out from Southam Communications—where they were critical of what is going on in Saskatchewan and were unhappy with the experience in Saskatchewan under wage loss. In fact, they are making

amendments to the wage-loss system in Saskatchewan, saying they were going to get rid of the deeming provisions. They just want to make it actual. Saskatchewan is not the best jurisdiction to compare, because it is not nearly as industrial as Ontario, but Florida, although it has more of an agricultural base, does have a large workforce and it is a complex workforce.

The Vice-Chairman: Thank you very much for your presentation.

Mr. Fink: Thank you, everybody.

The Vice-Chairman: The next presentation is from the Ontario Automobile Dealer Association and the Toronto Automobile Dealers' Association. I understand the other Bill Davis is here.

Mr. Davis: Floyd, you look different from the last time I saw you.

The Vice-Chairman: Welcome, Bill. You are very familiar to many members on the committee. We appreciate your taking the time to appear before us.

Mr. Davis: Thank you for allowing us the opportunity, Mr. Chairman. I should point out that when I sat here, I sat here so long on the standing committee on social development, I thought it was the only one that ever met in the Amethyst Room, and so there is an error, that we indicated it was the social development committee.

ONTARIO AUTOMOBILE DEALER ASSOCIATION
TORONTO AUTOMOBILE DEALERS' ASSOCIATION

Mr. Davis: Mr. Chairman and members of the standing committee on resources development, I am here this afternoon, in my capacity as manager of government relations, to speak on behalf of the 1,000 new franchised automobile dealers who comprise the membership of the Ontario Automobile Dealer Association and the Toronto Automobile Dealers' Association.

Our members are located in every city, town and village in this province, and we provide employment for some 45,000 individuals in such capacities as salespersons, clerical staff, service managers, accountants, mechanics and auto body personnel. Therefore, members of our associations have a deep concern and interest in the various issues which affect the Workers' Compensation Act, especially with some of the proposed amendments contained in Bill 162.

I am no expert in the field of workers' compensation, nor do I possess the technical expertise to discuss in depth the implications that will result from the changing of some language or the impact some of the proposed changes will have for the worker and for the employer. Our association has left that aspect of our presentation to a brief that, I understand, will be presented tomorrow by the Employers' Council on Workers' Compensation, of which our associations are active members and support that presentation.

I am here this afternoon simply to share a few concerns of the automobile dealers of Ontario.

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Our associations agree with the general principle of a well designed dual-award compensation system. Our present system just does not work. It is

how a system deals with the seriously disabled on a long-term basis that ultimately determines the integrity of the process itself. The proposed dual-award system represents a fundamental revision of the method of compensation. This new system will consist of separate pain and suffering awards and earning-loss benefits for the injured worker.

Compensation for loss of future earnings is a worker-specific permanent pension payment payable for income-replacement purposes. Its calculation represents an advance on the "average justice" award system used presently.

Under the present system, the permanent and totally impaired pensioner receives his or her 100 per cent pension, and that is it. There is no compensation for the impact of the accident on the individual's life. The new system provides a wage-loss pension which would be equal to his or her payment under the old system. He or she would also receive, over and above the wage-loss pension, a sizeable award for the noneconomic impact of the accident.

The components of this system are intended to ensure that a workers' income is protected. The worker is left with two types of disability, one which affects his or her ability to work, and the one which affects the noneconomic portion of his or her life. For a workers' compensation system to provide an equitable mechanism, an award that compensates both disabilities must be provided. A worker must live with the permanent consequences of an industrial injury for life. Pension benefits therefore must be the fairest and most equitable for the worker.

Our associations acknowledge that no system is perfect. However, we believe the proposed dual-award system in Bill 162 meets the criteria of fairness and equity for the injured worker.

Our associations are concerned that the responsibility to be conferred on the examining practitioner extends beyond a simple clinical rating. Clause 45(5)(b) directs the physician to assess the injured worker "having regard to the existing and anticipated likely future consequences of the injury." We believe this language will carry the examination far beyond clinical findings into the realm of speculation. The ratings schedule will not simply be applied to the clinical facts, but rather to the facts as enhanced by the physician's guesswork. There is no need for the physician to engage in this kind of speculation, given the worker's right to reconsideration under subsection 45(13).

Our associations are committed to more effective rehabilitation and support the government's goal of upgrading the rehabilitation services available to injured workers. Rehabilitation is an essential component of any strategy to return injured workers to gainful employment.

However, our associations have some concerns with the rehabilitation provisions of Bill 162, specifically subsection 54a(7), which creates the impression that rehabilitation is optional for the injured worker. We are confident that the majority of workers will participate in rehabilitation because of their desire to return to the workforce. However, we believe the statute can be strengthened by adding clear incentives for the injured worker to participate in rehabilitation programs.

Our associations also have concerns with section 54b because of the unqualified reinstatement obligations and the effect on existing rights. No exemptions are provided for an employer who simply cannot provide the worker with the same or reasonable alternative employment because that type of work

no longer exists within the operation.

The bill does not specifically address the inevitable conflict which will arise in many reintegration situations. For example, if a worker has been absent for an extended period of time and a replacement mechanic has been hired, it is open to interpretation as to whether Bill 162 will require the termination of that replacement in order to facilitate the return of the injured worker. Would the employer then face a charge of wrongful dismissal?

Nor does the legislation address the issue of the injured worker who declines the opportunity of returning to the same or similar employment. Should there be conditions in the legislation by which the injured worker's right to reinstatement can be terminated?

Our associations strongly suggest that subsection 54b(8) be amended to provide for the employee and the employer the opportunity to negotiate a reinstatement procedure which would be to the benefit of both parties, subject to the condition that any negotiated procedure is approved by the board.

Mr. Chairman and members of the committee, on behalf of the Ontario Automobile Dealer Association and the Toronto Automobile Dealers' Association, I wish to thank you for the opportunity to share some of our concerns for the proposed amendments to Bill 162.

The Vice-Chairman: Thank you very much, Mr. Davis. Any questions?

Miss Martel: I have two questions, please. The first: Starting on page 3 when we are looking at the question of the assessment to be done by a physician and you have stated that you believe the language will carry the examination far beyond the clinical findings, I am wondering then what you are suggesting. Are you suggesting that we not look at unanticipated deterioration or anticipated deterioration or that the physician just look at the absolute degree of permanent damage that was done?

Mr. Davis: We are suggesting you look at the absolute degree of permanent damage, and then if it deteriorates over a period of time the worker does have the right to a reappeal.

We believe that the way the language is situated at the present moment there exists the possibility the doctors will be kind of projecting into the future.

Miss Martel: Yes.

Mr. Davis: And that just causes us some concern and we have to look at it.

Miss Martel: All right. Do you know that under that section of the act the worker can only go twice and ask for an appeal? I think part of the reasoning that was put in there was to ensure that he could only come twice; that you would not allow him to come again and again. What we have said is that it would be better for everyone if he could go as many times as he wanted, providing his own family physician said deterioration had occurred. I am wondering if you would like to comment on that.

Mr. Davis: I think that would be fair and I think you could make that proposal as part of an amendment.

Our concern is that we have deep concerns about the projected kind of viewpoint of a medical physician. I do not think that the people I represent would have any concern about a person going back to be reassessed as long as he was injured and required that assessment.

Miss Martel: Okay. Thank you. Just one question in terms of rehabilitation: I noticed that you had said the association was confident the majority of workers would accept rehabilitation if it was provided, and you added that the statute could be strengthened by adding incentives for injured workers to participate. What about strengthening the amendments so the board actually has to provide rehabilitation services?

Mr. Davis: Yes, we would support that.

Miss Martel: Okay.

Mr. Davis: We would have no problem with that. We are committed to rehabilitation processes.

Miss Martel: Thank you.

The Vice-Chairman: Any other questions?

Mr. Carrothers: I wonder if I could just follow up on that, Mr. Davis. You do not feel the incentives that are in this legislation are strong enough in terms of rehabilitation. If I read this, if someone is judged to be a candidate for rehabilitation and benefits are maintained; if not, I would assume they would drop away. I am just wondering what more kind of incentive you could have than that sort of thing or what you would make as an incentive.

Mr. Davis: That is not quite what we said. What we have said is, it looks like the language is situated in such a way that it is an option for the injured worker to take the rehabilitation. We are suggesting that it should be strengthened so that it is mandatory he take it. That is what we are saying. In the way that it is written presently, there appears that kind of conflict. We are just asking you to look at it.

Mr. Carrothers: The reason I asked the question is that when I read that it looked to me that the hook, if you would, was the fact that the benefits would be maintained or would not be. In other words, that is the incentive.

Mr. Davis: That is not the interpretation.

Mr. Carrothers: That is how I read it anyway.

Mr. Davis: But your interpretation is different than mine, Mr. Carrothers.

Mr. Carrothers: Yes.

Mr. Davis: The way we read it, and the way that our people told us to look at it, was that it looks like there is the option for the injured worker and we would like that option to disappear.

Mr. Carrothers: And how would you then make it mandatory now?

Mr. Davis: I think that is your problem.

Mr. Carrothers: Very helpful.

Mr. Davis: I think what we were asked to do was to comment. We were not specifically asked to give full amendments. What we have said is that we examined this. We found that that particular section creates some problems for us, because it looks like, in our case, a mechanic who slips on the floor and injures himself would not be required to take rehabilitation.

Mr. Carrothers: Presumably, then, if you are leaving it to us to find a solution and we conclude that that is the way to do it, you would accept that judgement. Is that what you are saying?

Mr. Davis: I did not say that.

The Vice-Chairman: Any other questions or comments? Thank you very much, Bill. We appreciate you appearing before us. I appreciate also your brevity and your forthrightness.

Mr. Davis: I used to sit here.

The Vice-Chairman: Next to appear is the Rubber Association of Canada; Mr. David Pennycook. Correct?

Mrs. Ardanaz: Et al.

The Vice-Chairman: Et al? Okay. Welcome to the committee.

Mrs. Ardanaz: Thank you.

1510

The Vice-Chairman: Welcome to the committee. Perhaps you could introduce yourselves to the committee. We have scheduled half an hour for presentations. It can be all taken up with your presentation or part of it with your presentation and part with an exchange with members, whichever you prefer.

RUBBER ASSOCIATION OF CANADA

Mr. James: I am Brian James, president of the Rubber Association of Canada. My colleague is Teresa Ardanaz, who is an adviser to the association on workers' compensation matters. The Rubber Association of Canada is pleased to have the opportunity to make a submission to the standing committee on resources development.

The purpose of this brief is to provide the committee with the rubber industry position and to comment on Bill 162, An Act to amend the Workers' Compensation Act. We believe that the present system of workers' compensation is in need of review and reform and believe that many of the legislative proposals contained in Bill 162 represent a significant move towards greater fairness in the provincial workers' compensation system.

The Rubber Association of Canada is a national association founded in 1920, representing some 70 companies, principally manufacturers of rubber products. These manufacturers include large multinational corporations and large and small Canadian-owned plants. The tire sector, which quite recently suffered the closure of two old plants, is in the course of reconstruction. Its future will depend heavily on the decision of offshore owners to invest

substantial sums in the development of the industry in Ontario. Until now the most recent development within the Canadian industry has taken place outside this province. The expansions in Quebec and Nova Scotia have been much greater than those taking place here.

The rubber industry is labour-intensive and, over the years, has been a very stable source of employment. As well as being labour-intensive, the industry is capital-intensive, so that once the investment is made there is a tendency for companies to stay in the same location and provide steady employment over long periods of time. For this reason, it is important that the industry in Ontario be competitive with plants in other parts of Canada and other parts of North America.

Tires and automotive components form some 70 per cent of the products manufactured by the industry with a substantial component going to the mining industry and manufacturing in general. Principal items are tires, auto accessories, hose, belting and moulded goods.

The role of the rubber association includes that of promoting safety in our members' products, in their use and in the workplace. Equally, we have a responsibility to promote expansion and profitability of the Canadian rubber manufacturing units in order to ensure their longevity.

The occupational health and safety committee of the rubber association is one of long standing, one which is deeply concerned with the welfare of all workers in the industry, but equally concerned to ensure that legislation covering workers' compensation is administered in a manner which is fair to employees and employers alike.

The industry in Ontario is assessed under rate group 544. The current assessment rate for the industry is \$4.28 per \$100 of payroll. In constant dollars, assessment to the board in 1977 was \$13 million, whereas in 1988 the assessment contributed by the rubber industry was \$17 million. While payment by the rubber industry into the workers' compensation system has increased over the years, as you will see in exhibit 2, there has not been a concurrent increase in accident frequency to justify the rate of higher costs.

Between 1977 and 1987, the unfunded liability for rate group 544, the difference between Workers' Compensation Board present assets versus future financial obligations, has risen from \$20 million to \$57 million in constant 1988 dollars. It should be commented that the WCB's assessment rate strategy overall, not necessarily of our rate group, appears to be working. However, the impact of Bill 162 provisions on this assessment strategy, in particular as it relates to our rate group, is unknown.

The rubber association is a member of the Employers' Council on Workers' Compensation, an organization dedicated to the development of an effective and efficient workers' compensation system which will best serve injured workers' needs while taking into consideration economic realities. We would like the record to show that the Rubber Association of Canada supports the position of the Employers' Council on Workers' Compensation with respect to the provisions in Bill 162. It is in this context that we appear before you.

The members of the association are committed to the development of working environments which promote health and safety and to improvements in the medical and vocational rehabilitation of injured workers.

There are, however, legitimate concerns regarding the costs of workers'

compensation in Ontario for this industry vis-à-vis in other jurisdictions, both national and international. As the introduction suggests, we consider the industry to be a vital contributor to the wellbeing of Ontario's economy and consider that improvements to the workers' compensation system would ultimately prove cost-effective and enhance our ability to compete in the open market.

Before going into the greater detail of our submission, I would like to make it clear that we seek a reasonable balance between fairness to any and all injured workers and the cost factors which allow the industry to remain competitive on a national and an international basis. The answer, we believe, is in one of improved legislation, which Bill 162 appears to represent, and in a well-managed program which is fair to injured worker and industry alike.

I would now like to ask Teresa Ardanaz to go into the detail of our submission.

Mrs. Ardanaz: I must say, when I came into the room and heard my name mentioned by Mr. Fink, it was quite disconcerting. I will own up to being the Teresa Ardanaz who apparently did not satisfy his needs, but I really felt I had done everything I could for that man. What can I say?

The association's position on Bill 162: Bill 162, as you, I am sure, have heard many times during the course of the hearings, is the culmination of exhaustive review of the workers' compensation system in Ontario, begun at the request of the Ministry of Labour in 1980 by Professor Weiler.

While many of the recommendations made by Professor Weiler were enacted in 1985 in Bill 101, the proposal dealing with fundamental changes to the payment of benefits for permanent disability which, as you must have heard, is the largest share of workers' compensation dollars, was not introduced as reform legislation at that time.

Since then, the subject of a dual award approach for permanent disability compensation as endorsed in the first report was further examined by professors Weiler, Burton and Johnson in 1986. In conclusion, the report suggested that reform should be undertaken, notwithstanding the fact that it would be highly controversial and the subject of potential discord between the employer and worker communities because of its complexity.

The Rubber Association of Canada agrees that fundamental reforms should take place at this time. The present system of compensating for permanent disability in Ontario, with the rough justice concept at the core, does not serve to compensate equitably the majority of injured workers. Thus we are left with a group of injured workers who are either under- or overcompensated, as we normally use the term.

This leads to dissatisfaction for both injured workers who object to the system's depersonalized approach—I will refrain from using the words "meat chart" yet again—and its inability to address individual injury impacts on earning ability, except through short-term and finite remediation through temporary supplements. For employers, there is dissatisfaction as well, as they pay ever increasing costs without appreciable solutions for undercompensated workers or, indeed, without getting any sort of satisfaction that the system is working properly in spite of its cost.

Consequently, the association in principle supports the proposed reforms, with some issues which require consideration and, we put to you, further review.

We present an overview of the rubber association's position on some of the major provisions. Due to time constraints, namely, the half-hour which increasingly feels like three days, we have focused on what we consider salient points. This does not discount interest in any provisions not discussed herein.

In the first place, section 1, the definitions section: the Rubber Association of Canada considers that introducing definitions for "impairment" and "disability" which in effect reverse the meaning of these terms as they are presently found in the Workers' Compensation Act and all workers' compensation policies and directives flowing from it will lead to confusion and error.

Consequently, we are against the suggestion that the terms "impairment" and "disability" be adopted as put forth in Bill 162.

Section 5a, maintenance of employer benefits for injured workers: The association is supportive of the rationale that injured workers' employment benefits, for example, the Ontario health insurance plan, dental and so on, should be protected from the effects of compensable disability requiring lost time from work. However, the legislation should make it clear that the employer will not incur penalty or fault in cases where the benefits are protected in any case, primarily through private disability insurance.

We consequently support the provision, but with some amended language that would remove that fault where it is not necessary.

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Section 41, the maximum earnings section: An increase in the amount of average earnings upon which the loss of earnings is to be calculated, presently proposed to become 175 per cent of the average industrial wage for Ontario two years after the proposed legislation comes into force, will further impact on the ability of rubber manufacturers to compete with their counterparts outside the province.

The ministry, to our knowledge, has not yet conducted appropriate cost studies which would allow reasonable conclusions to be drawn on the subject of just exactly what the maximum ceiling should be. We are of the opinion that the issue is too far-reaching to be introduced without proper analysis.

We are against the provision until it is further studied.

Section 45, noneconomic loss for the permanently impaired: The Rubber Association of Canada is supportive of payment to injured workers for the noneconomic effects of a compensable injury.

There are a number of concerns which arise from the reading of the section as it now stands. They are as follows:

What is meant by the degree of permanent impairment of the worker according to the prescribed rating schedule as listed in clause 45(5)(b) against the board's determination of "the percentage of permanent impairment" under subsection 45(7)?

What form will the prescribed rating schedule take, and will it consequently permit review of permanent disabilities by doctors external to the board and external to the compensation system in an objective and quantifiable manner?

What is meant by the "existing and anticipated likely future consequences of the injury"?

Subsection 45(16) states, "The Lieutenant Governor in Council, on the recommendation of the board, may establish a roster or rosters of medical practitioners," whereas under subsection 45(9) there is the term "the board shall," which is mandatory, provide for medical practitioners' names for reconsideration purposes. Is there in fact discretion, as suggested by the word "may," and if so, who makes the final decision as to whether one should or should not be developed?

We support the fact that no appeal lies to the Workers' Compensation Appeals Tribunal from a decision of the board under this section, since, in our opinion, the section as it stands would allow for a definitive determination of permanent disability.

So we stand for the provision with clarification.

Section 45a, the compensation for future loss of earnings: The Rubber Association of Canada supports the payment of benefits to compensate for the ongoing loss of earnings resulting from compensable injuries. We consider that the effective application of this concept will correct the present inequities.

We are well aware that there is potential for substantial cost increases in the implementation of this section unless vocational rehabilitation is a success. We are hopeful, and indeed we trust that this will be the case and, as employers, we are committed to assisting in this regard.

Where it appears, however, that the injured worker will not suffer permanent disability, no determination regarding future loss of earnings should take place, or at least the legislation should be clear that the prospective loss would take into the account the ability to earn full wages from the day from which full recovery is anticipated.

Subsection 45a(3) gives rise to concerns as well, pertaining to the exact meaning of the terms "personal and vocational characteristics," "prospects for successful medical and vocational rehabilitation," "suitable and available employment," and so on. We are aware that the board is empowered to make regulations governing these clauses, among others, under section 69, and, as employers, request that there be broad consultation in the development of regulations.

We believe that a determination regarding compensation for future loss of earnings for a worker who is co-operating in a rehab program should not take place until such time as the rehab is concluded—and I hesitate to say this, but I will—successfully or otherwise. Determining wage loss in the middle of a vocational rehab program which will lead to employment may overcompensate at month 12, and it would appear more reasonable to make the determination regarding future potential loss of earnings when re-employment is much clearer in a particular instance.

Section 45b: This is the section dealing with retirement income. A large percentage of the working population does not participate in employer-supported retirement pension plans. Wage-loss benefits under section 45a will approximate take-home pay for the majority of injured workers. The benefits, as we know, will be inflation-adjusted.

This should give workers the ability to contribute to their own

retirement fund during the period of disability, as they would during full employment periods. If benefits for loss of retirement income are in fact enacted, there should be some way in which one can draw those benefits from benefits payable under section 40 or 45; in other words, without creating an additional 10 per cent for employers to pay for.

We are therefore against the provision unless modified as stated.

On section 54a, vocational rehabilitation: In our view, the success of dual award compensation hinges upon the effective re-employment of injured workers. On that basis, we support the inclusion of specific vocational rehabilitation provisions in the act. The proper administration of this section would represent a vast improvement on the present vocational rehabilitation experience in workers' compensation. While there is criticism of the time frames as outlined as being overly drawn out, at the very least they would shorten recent practices at the Workers' Compensation Board.

We should include in here the fact that we are also of the opinion, as stated by previous presenters, that the suggestion that rehabilitation will cure all the ills of the compensation system may not be a very reasonable or practical solution. But certainly I think that creating a focus on workers' compensation as being a vocational rehabilitation issue that could be resolved through re-employment is a reasonable approach.

As the inclusion of time frames in this section appears at least in part designed to reassure that timeliness will be respected in terms of vocational rehabilitation, there should be a specific time frame described for "within a reasonable time" under subsection 54a(7). This refers to cases in which the section may not be operational at the time frame described but should be made operational within a reasonable time.

In order to properly assist in the development of a vocational rehabilitation program under subsection 54a(2), the employer and not only the worker should receive a copy of the vocational rehabilitation assessment undertaken by the board or through the board.

We support section 54a, with some revisions.

On section 54b, reinstatement and re-employment: In general, the Rubber Association of Canada is supportive of reinstatement legislation. However, we are concerned about the potential conflict between the requirements as listed in this section and programs under section 54a, vocational rehabilitation. That is, what of the worker whose best plan for rehabilitation contemplates re-employment with a different employer from the outset? Would the accident employer then be open to penalty under subsection 54b(4)?

Subsection 54b(2) states that the employer "shall reinstate the worker." We would find it more reasonable if the language said that the employer must offer reinstatement in a job as described in the section. We see the danger that if a worker refuses reasonable employment as offered, the employer will still be seen not to have complied with the requirements of the section and will be subject to penalty.

There is concern as well about the absolute prevalence of this section over collective agreements.

Lastly, we understand that it is unclear just how workers' compensation law as described in this section may conflict with human rights legislation.

We support section 54b, with further review.

On section 69, the power of the Workers' Compensation Board to make regulations: Earlier in the report, we briefly touched upon the subject of regulations. In effect, the policies and procedures which will give practical application to the dual award system will be shaped by the content and nature of the regulations to be developed under this section. It is important, therefore, that the employer and injured worker constituencies, at the very least, be permitted input into the development of regulations.

So we support regulations being put forth by the processes outlined in the proposed bill with reservations; primarily that there be broader input from all constituencies.

On transitional provisions: The Rubber Association of Canada agrees that injured workers who are undercompensated, as we commonly use the term, should receive redress under this section and, where applicable, a temporary supplement should be granted.

In the interests of fairness and financial integrity, injured workers who are overcompensated should have their benefits adjusted accordingly.

We support the transitional provisions with modifications.

As was indicated earlier by Mr. James, the rubber association believes that the system is in need of reform. We do not see Bill 162 as final and conclusive, but rather as an important first step in the achievement of a fairer and more sustainable workers' compensation system.

It is important that there be a commitment by the ministry to increase the level of ongoing communication among the key constituencies involved in the system: employers, injured workers, the board and doctors primarily. Only through continued dialogue will we be able to achieve significant and satisfactory improvement, all of which is respectfully submitted for your consideration with thanks for the opportunity of appearing.

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Mr. Chairman: I have one question and some other members have too.

I can understand almost all of the employer groups' objections to certain parts of the bill. Whether I agree or disagree is not the issue. The one I do not understand is the objection to the ceiling being raised. The reason I do not understand it is that employer groups which are fairminded about the whole process do say they want injured workers compensated when they get hurt. That is not the game plan that is in their heads; they are not trying to do harm to them.

What I do not understand is how you justify having an injured worker at one salary getting 90 per cent of the net and at a higher salary not getting 90 per cent of the net. That is the part that leaves me puzzled when employer groups say it. With the others, I understand, at least, where they are coming from. That one I do not.

Mrs. Ardanaz: I think that in our brief we were not necessarily against this provision. The point that was made is that there appears to have been no clear financial analysis done on the subject, at least in so far as we have any information on it. So the employer groups, or certainly the ones that

appear before you right now, would be interested in seeing what the impact of raising the ceiling to 175 per cent or 140 per cent or 150 per cent would be and see whether or not there is some more reasonable approach.

You are quite right that the employers whom I deal with, at any rate, and certainly all large employers, want workers properly compensated. Mr. Pennycook has joined us.

Mr. Chairman: Yes.

Mr. Pennycook: I am from Uniroyal Goodrich, which is the largest rubber company remaining in Ontario. The other two majors have closed, as you know.

Mr. Chairman: We noticed.

Mr. Pennycook: My concern has to do essentially not so much with the compensable ceiling as with the assessable ceiling. As you know, there is discussion for example, in Saskatchewan. There is talk about a ceiling of 48,000, which is for compensation purposes, but their assessable ceiling, which is what the employers pay out at, is at \$37,000, for your information.

I am particularly concerned to be competitive. What we are concerned about is that down in Nova Scotia we have a sweetheart-deal situation to be competitive with where the ceiling is \$29,000. Michelin Canada Inc. in Nova Scotia is our prime competition. The rate there is 42 cents, which is less than half of our share of the unfunded liability. So this is a \$3.9 million advantage that those guys have down there over us and we are trying to stay in business here. It is a tough situation.

What we are really saying is that all our workers in the plant are inside the ceiling. It does not matter whether it is \$36,600 or even \$40,000. What this is really going to do to us is to start raising the assessment that we are going to have to pay, not for people who are exposed to injury but for people who are sitting in offices three miles away from the production facilities, because in Ontario, as you know, we do not have, as we would like, a separate rate for office workers.

I find this a very ridiculous situation, but I know we are a little off key here. For example, where I work there is a building owned by an insurance company. If I worked for the Mutual Life Assurance Co. of Canada, my landlord, I would be exempt from having to be covered since I am an accountant. If I were a chartered accountant working for a private firm, my rate would be nine cents, but because I work for a rubber company, I am in at 4.28 cents.

I have to compete with Akron, Ohio, which is our head office. These boys are on an occupational rate there at 20 cents for office workers. By office, I do not just mean the typists and so on; I mean anybody, in logistics or marketing or what have you. I am saying this may take us into the green paper area. I am not really objecting to the compensable ceiling going up—we are just frankly not exposed to that problem—but what I do object to is having to pay out an estimated \$80,000 extra per annum for no benefit whatsoever, but just to go to extra unfunded liability.

You know that our biggest problem, of course, is that our friends at Firestone Canada Inc. in Hamilton walked away with this province and dumped us with about \$20 million to \$25 million of unfunded liability, and that is what is left. That is the background, so you understand our very special perspective on this problem.

Mr. Chairman: Yes. In other words, even if there were never an accident, you would still be assessed a higher rate because of the increased ceiling.

Mr. Pennycook: Yes, and theoretically you might say, "Your rate group is going to go down," but not given this inherited, very unfair unfunded liability situation that I got thrown at me from Firestone.

Mr. Wildman: Mr. Pennycook, I certainly have some sympathy with your view about the different classifications of workers. That has been a problem that not only your industry but a number of other industries have faced across Ontario in terms of assessment. I certainly, from my own personal point of view, would agree with you that we should all be doing all we can to get rid of that sweetheart deal in Nova Scotia. Unfortunately, that is not within our power.

I would like to ask Mrs. Ardanaz a question regarding deeming.

Mrs. Ardanaz: Deeming?

Mr. Wildman: Yes.

Mrs. Ardanaz: Bad word.

Mr. Wildman: As I understand your presentation, you are saying that your association wants to see rehabilitation done and, in terms of that, a wage-loss provision incorporated. Is it your position as an association that this will work even if the employee, the injured worker, has not in fact been reinstated or re-employed? In other words, we could indeed make it work with the board having the option of deeming the employee capable of a certain kind of work even if that employee does not have that work and does not have the option of getting it?

Mrs. Ardanaz: I think, in our view at any rate, this is where the nature and type of regulation-making power will come into being. I think that one would have to be very specific as to what is meant by suitable and available employment and that ought to take into consideration just what is available to an injured worker at the time that a determination regarding future loss of earnings comes up.

Ultimately, as I read the legislation, and I believe the association supports this, there may be cases where you will be faced with injured workers who are not in fact re-employed and to whom therefore some determination will have to be made regarding what they are considered to be able to earn, including, by the way, workers who do not wish to engage in vocational rehabilitation, which in my view is a very small percentage but it would occur.

Mr. Wildman: This committee had presented to us, when the committee was in Timmins, an example of a miner who was deemed to be—

Miss Martel: The air traffic controller?

Mr. Wildman: Yes.

Miss Martel: No, he was a custodian.

Mr. Wildman: Yes, a custodian who had been injured and who was deemed by the WCB to be capable of working as an air traffic controller—

Mrs. Ardanaz: No, we do not support that.

Mr. Wildman: ---and therefore would be eligible to work at a certain level of pay. The fact is that this custodian, despite the need for air traffic controllers in Toronto---

Mrs. Ardanaz: I was going to say, if his visual acuity is good, maybe we are on to something.

Mr. Wildman: ---was not able to get that work and certainly was not capable of it, in his view and in the view, I think, of many reasonable people, was being paid on the basis as if he would be eligible for the kind of pay that an air traffic controller would get. Surely the way to get around this is to say that the worker's loss could be estimated only when that worker has been re-employed, so that you know what that person is getting and can compare that with what he was getting before he was injured.

Mrs. Ardanaz: You have a very good point. I think that one would anticipate that for wage-loss legislation to work properly, vocational rehabilitation, where the worker desires it and where there is an opportunity to increase the potential for re-employment if the employer does not have something for the worker to go back to, should take place.

I think that the act, as it reads, allows for the possibility of an injured worker---I think it can happen and has happened in my experience---who, by virtue of the fact that he has now reached a certain age or because of family circumstances or for whatever reason, decides that at this point in time he is not going to reintegrate into the workforce and that injured worker none the less is left with some residual impacts from the injury. I would give a wage loss to that worker notwithstanding that he may or may not return to employment at that time. It is on that basis that I would not want to see the act lock itself into absolutely---

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Mr. Chairman: Can we move on, Mr. Wildman?

Mr. Wildman: Yes; thank you.

Miss Martel: Perhaps I can pick up from there. I think the thing that bothers my colleague and I is the fact that the board has large discretionary power to determine what is suitable and modified, etc., and that deeming occurs now at the board and the language of the policy statement is very similar to the language which appears in Bill 162. We do not think it is going to go away unless you say out and out that there will be no deeming allowed, period.

If I can go back to some of the comments you made at the back about regulations, you talked about regulations in terms of the dual award system, but there are a large number of other regulations the board will have the power to put in place. I wonder what you can suggest as an open and fair concept so that it is not just the board making regulations. What we have seen so far is that when that happens, it is certain to undermine and not help in any way. I wonder what kind of concept or mechanism you envisage that would allow for participation by all interested parties to make sure the regulations are fair.

Mrs. Ardanaz: I have to confess to not being in any way legally

trained. I am not entirely clear what the term "regulations" means in the context of the statute. I took it to understand that the board may make regulations or the board may make determinations on what all of these items are, but I never accept that the board acts in isolation, although clearly the reality of it is that very often it does or has done.

I know the board embarked on an express commitment to involve the key constituencies in policymaking, for example, about two years ago. I am not sure that has really developed satisfactorily to this point. I think it is for the employer and worker constituencies to ensure that system is working.

When Bill 101 came into being and there was the opportunity to get employer and worker viewpoints expressed at the board of directors, that, I think, is another method through which there ought to be a stronger commitment to ensure everyone's opinion is heard and there is weight given to both sides of the question.

About how to do it practically, I took it as a given that development of regulations need not be an in camera process and that whatever suggested approach there is, for example to the term of establishing criteria for assessing vocational and personal characteristics, which could mean many things to many people, there would be an opportunity to input into that either through committee work or through creating an ongoing committee, for want of a better word, an advisory or supportive group that would speak to the ministry and to the board about what the best determination for all of these terms would be.

I do not think this is a bad bill. I think that it has very good possibilities of addressing a lot of the problems that exist in the system right now, and that it would be very unfortunate to throw away the wage-loss concept as described here simply because of perceived inefficiencies by the board, as I hear it described, or the suggestion that it may or may not be able to administer it properly. I think that requires that one address the administration, but that does not mean you throw away the legislation simply because the administration has to receive some sort of support from the groups that are impacted.

Mr. Wiseman: I just want to clarify this in my mind. The last gentleman who spoke mentioned that Firestone walked away from an unfunded liability, or whichever one it was in Hamilton. When that happens, does that fall back on the category they were in or does it fall back on all—we had the construction association and everything—or do you pick up the slack as a rubber—

Mr. Pennycook: We pick up the slack and I am particularly concerned. I know this is not quite Bill 162, but it is a very major issue when we are talking the rubber industry, which is a very mature grouping with many defunct companies in there. I had the other day a pension that is 45 years old, for a previous company—it has nothing to do with us here—when we were making rubber footwear. It is still getting hit in this year against our costs. This is an absolutely no-win situation when you have to go head to head here with Nova Scotia; even in Alberta, I was saying the rate there is 176 against 428, if we want to get away from Nova Scotia.

Mr. Wiseman: Is the liability against a firm when it goes out of business, providing it does not go broke and go out of business? Is it not

sacred like pensions would be, that they would have to put up an upfront cash payment to buy their way out of that unfunded liability?

Mr. Pennycook: It is not and my suggestion to the minister was that it should have been, but apparently the law was not put in place in time.

Mrs. Ardanaz: It would be addressed by a company buying out another company within Ontario. In that case, you buy the company and it retains the name and so on, and you do accept the workers' compensation liability that was accrued earlier. In this particular case it was a company that simply left Ontario operations and there was no legal redress.

Mr. Pennycook: That company was one that had historically had an extremely bad record, probably more to do with labour relations than safety, I might add. Goodyear also closed a plant, but happened to have a very good record, just to put the record straight. It is Firestone left the province and in my opinion dumped us here with about \$20 million of unfunded liability. I think that is grossly unfair.

Mr. Wiseman: I have another question. It will be brief because I know we are running out of time. With regard to the other part you mentioned, that your office is completely separate from the factory, do you know of other trades where the office is separated, where they are paying the same rate as factory workers? You mentioned an accountant; I think it is 20 cents you would be paying in your building against \$4 and something. Are there others in that boat?

Mr. Pennycook: In this province, as I understand it, if you happen to work for a rubber company and you are part of the rubber products group here, that is the rate you pay. If you happen to work for a chartered accountant's firm here, you pay that rate, but if you work for a rubber company—

Mr. Wiseman: If you were General Motors and you had a building producing automobiles in one place and your office was in another, you would have two sets of rates?

Mr. Pennycook: You would have only one rate. That is what I say we need if we want to compete on head office jobs under free trade with the south of the border, for those of us that are subsidiaries of American companies.

Mr. McGuigan: I wonder if you could correct me, Mrs. Ardanaz. I thought I heard you say you were not opposed to some workers receiving a pension for life and not having to be rehabilitated or go out into the job market. Is that correct?

Mrs. Ardanaz: That is what the act contemplates. If you choose to pass it as is, the employer community will live with that, simply because they are of the opinion that they want to co-operate in vocational rehabilitation and that that will rarely occur. Certainly, the wage-loss concept as put forth here and in other jurisdictions does allow for the economic effects of the injury on a worker's earning ability, so if he or she were unable to return to pre-injury employment, he or she would be entitled to some wage-loss compensation, regardless of what vocational rehabilitation efforts had been made.

Mr. McGuigan: I was thinking of a step further. I was on this same committee several years ago, so I hope you will forgive me for not remembering

the exact context of it. There were allegations, particularly about the tire industry with its very heavy manual work, in that people were picking up the carcass of the tire, turning it over and putting it back in the mold, that at about 45 to 50 years of age, because of the very heavy work and also the piecework nature of it—these people apparently made big money by putting out a heavy quantity of work—they were just worn out. Is that still the case in the rubber industry, or are you more modernized today?

Mr. James: I would say the industry is very much changed and very much more mechanized now. Obviously, that has evolved over a period of time. I do not know about the "worn out," but certainly tire building, which is of course only one occupation within the factory, especially truck tire building, years ago was a fairly heavy task. Today, with the advent of radials which now represent, I do not know, I think it is actually 100 per cent in Canada now, the equipment is two-stage and very highly mechanized, so it has changed out of all recognition in fact.

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Mr. McGuigan: In doing away with the old plants, you have also introduced new equipment and new processes and so on?

Actually, I wondered in my own mind what you say to that person if in fact he is worn out in 45 or 50 years and you say to him, "You've got to go out and get another job." That person is going to say, "I've given my all in that period of time and I want a pension, rather than a job, for the rest of my life." What do you say to that person?

Mr. James: As I recall, truck tire building was a point to which people aimed, because it was probably the highest paid position in the factory. It tended not to be taken on by the youngest. I do not know what number of years people actually did that position. It was certainly something people aimed towards rather than ran away from. In my experience, if somebody did feel it was getting too much, it was not difficult to move him on to something that was less demanding. I have no experience of anybody asking for a pension, but I suppose it could happen.

Mr. McGuigan: It is largely a thing of the past.

Mr. Pennycook: In my particular firm here, we are strictly in the area of passenger and light truck tires, period. There are a great many rationalizations going on in North America that the plants are making, and ours—two plants, so both—are not even on medium truck tires.

Mrs. Ardanaz: To answer your question another way, what you would say to them under the present system is that there would come a point at which they are no longer entitled to temporary total benefits because they are not totally disabled, so they would come up for pension review and would receive perhaps a pension of 10 per cent, which would be for life and would equate to whatever amount of dollars, depending on what they earned.

What you would be doing with them under the new system, which I think would in fact be fairer in the case you speak of, is that you would give them a lump sum for whatever percentage of disability one comes up with, in terms of disability as defined in the new act, for whatever impact on their lifestyle this injury has made. Let's assume it is 10 per cent. They would then get a lump sum for that, plus you would examine how working in that industry and how the disability with which they are left no longer equips them

for X number of jobs. If they are either unable to rehabilitate or unwilling to rehabilitate, or by joint accord they are not going to re-enter the employment, under the new system they would be entitled to an economic-loss award as well.

In my view, that scenario would give the worker greater benefits under wage loss than he would receive presently.

Mr. Chairman: Thank you very much for your presentation to the committee.

The next presentation is from the Law Union of Ontario. I believe Mr. Wilson and Mr. Anderson are both here. Welcome to the committee, gentlemen.

This is the brief with the blue tag on the corner. If you will introduce yourselves, we could proceed.

LAW UNION OF ONTARIO

Mr. Wilson: My name is Wes Wilson. I am a lawyer. This is Ian Anderson, a colleague of mine, who also is a lawyer. He is presently employed at the Parkdale Community Legal Services clinic as the head of its workers' rights section. I am presently in private practice and have been representing injured workers as a law student, as a legal worker and as a lawyer in the clinics and the private bar for about six or seven years.

The Law Union of Ontario has approximately 300 members comprising lawyers, law students and legal workers. I suppose the designation of somewhere-on-the-left would reasonably account for the reason for being of our organization.

Within those 300 members is a collective of approximately 15 to 20 members who, more or less full-time, represent injured workers—lawyers and legal workers from the clinics and the private bar. We meet irregularly and share our experiences of dealing with the board. It is based on that experience that I appear here today with Mr. Anderson, to give you our views on where Bill 162 should not go.

I will not take you word for word through our brief. I think much of our position can be summed up very briefly. Let me explain, first of all, that we are not injured workers. We do not represent injured workers in the political sense. We do not know what it is like to be an injured worker and we do not experience the lifestyle of the injured worker.

For that reason, I think it would be inappropriate for us to come before this committee and talk about the political difficulties we have with Bill 162. It would be inappropriate for us to hold ourselves out as speaking on behalf of injured workers. For the most part, we will adopt the position to be taken, I understand on Thursday, in the submission of the Union of Injured Workers. We have selected three issues that have a substantial legal component, which we felt may be appropriate for us to speak on, not legal in the technical sense of the wording of the legislation but in the broader sense of how it will affect the putting forward of injured workers' rights.

In the first two pages of the brief, we have set out essentially our position that this bill must be scrapped. There is no salvageable part of it.

It is unacceptable in every aspect. It will do untold damage to the injured workers of this province.

The rejection or the anticipated rejection of this bill by representatives of labour and injured workers' organizations, in my submission will bear out our general position that this is no good for labour; it is no good for injured workers.

The three issues we want to focus on are appeal rights, reinstatement and board discretion. I understand the minister has made certain statements promising amendments to the two provisions in the bill that would take away the right to appeal to the Workers' Compensation Appeals Tribunal. At this point, they remain promises to remove those sections, and for that reason we felt it important to nevertheless come before this committee and state in the strongest terms our objection to any attempt to remove any issue from the general scrutiny and oversight of the independent appeals tribunal. Injured workers fought long and hard to have that tribunal put in place and the procedural and substantive supervision and protections it provides cannot be truncated in any context.

Particularly with respect to reinstatement rights and with respect to the noneconomic-loss provisions, the sorts of issues that will be raised by the board are exactly the sorts of issues that cry out for the oversight of WCAT. The capacity of the board to alter its internal appeal structure is unfettered, apart from one provision in the present act which says there must be a hearing. It does not dictate what kind of hearing it must be; simply, you must have a hearing of some sort.

The present devolvement of the decision review branch into the integrated service units and the rumours going around the board that the hearings officers are soon to follow are an indication of how the internal review mechanism can be manipulated by the board, and potentially remove very important protections, procedural and substantive oversight protections, from injured workers.

Perhaps the most potentially damaging aspect of this bill is the enormous amount of discretion to be accorded the compensation board. I know that a substantial part of many of the members' constituency work deals with workers' compensation advocacy. Any advocate who has been before the board for any length of time knows it is the board itself rather than the present legislation that is the real problem. The exercise of discretion in the past by the board has given us no hope that Bill 162 is going to be implemented and interpreted in a fair manner with respect to injured workers.

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The recent experience of the corporate board reviewing decision 72 on the interpretation of one of the accident definitions in the act, the recent experience of injured workers having the threshold test for subsection 45(5) supplements reinterpreted in a very restrictive manner and the bringing in of a deeming provision and its application worry me a great deal and, I am sure, worry injured workers or potential injured workers who are facing the exact sort of board discretion we have witnessed in the past.

The board's approach to legislative interpretation has been one of strict and narrow interpretation, not in accord with the sort of legal interpretative guidelines that would normally face people administering a benefit giving act. Normally, these sorts of acts are to be given a fair,

large and liberal purpose of approach in their interpretation, not the sort of restrictive application we have witnessed on the part of the board.

It is for that reason that I worry a great deal about this deeming provision and the wording of many of the sections of Bill 162, including the duration of the wage loss provisions. The ceding of regulation-making power effectively to the board is, in my submission, an abdication of this government's responsibilities to govern the administration, in the broadest sense, of benefits to injured workers.

There has always been a provision in the act saying you can make regulations and it has been seldom used, but the enumeration of a number of areas in which it can now be used is an invitation to the board to exercise this power to enshrine policy. When that policy is implemented by way of regulation, the Workers' Compensation Appeals Tribunal is going to be loath to review policy and the Divisional Court is going to be loath to exercise its judicial review capacities, because there is a big difference between a regulation and board policy. The accountability of that regulation-making body, of course, is nil. The board is not accountable to the people it is supposed to serve. There is no means of public input into this regulation-making power.

The second element of board discretion, of course, is the wording of the act itself which allows the implementation of the deeming process, for one. The historical experience, as I have indicated, of injured workers and their representatives has been one that does not give us a great deal of hope on this score.

The criteria set out in the deeming provisions are worrisome. The definitions of "suitable," "available," all these things, are going to be interpreted by a myriad of claims adjudicators sitting at desks, which is going to provide no legal certainty as to the administration of these provisions. Each individual adjudicator is going to be able to assess that deeming provision with a particular worker based on his experience, his biases, his personal interaction with that person. The person who sits with a file on his desk and receives those angry phone calls from that injured worker is going to be the one making the determination based on very loosely worded criteria about what they are capable of. This committee has heard and will continue to hear examples of how that same power has been administered in the subsection 45(5) context. It is abysmal and frightening.

The important thing is, if you are going to have a wage-loss system, first structure it so that there are identifiable criteria that must and shall be followed by the decision-makers, and second, so that phantom jobs cannot be applied on the second part of the deeming formula. There must be a job out there that you can point to and offer to a person. The air traffic control example that was brought up before is certainly not out of line with our experience and with the manner in which deeming has been, so far, exercised in pension supplements in this province.

With respect to reinstatement, the reinstatement provisions of this act provide no rights. They provide no obligations on the part of the employers. The exceptions are so broad that I really am not sure that the provisions apply to any workers.

The requirement of having one year's experience excludes the vast portion of the people most susceptible to injury: those who are untrained and those who are new at a job and most at risk. There is no rational basis for

limiting application to employers of 20 workers or more. I understand the concern is with small companies being forced to modify their work processes to take on more bodies than they can afford, but the workers' compensation system has the capacity to structure methods of alleviating any undue hardship on a small employer by offsetting costs and providing rehabilitative help for the workers to structure them into the kinds of jobs. There is no need to write off all the small employers at a single stroke.

The nonapplication to existing injured workers means that it is not going to be a universal right. There is no rational basis for saying that if you are injured before, you do not have a right to re-employment, but after, you do. The capacity to create further exemptions has the possibility of limiting this to essentially a provision of nonapplication. Limiting the duration under which the employers' obligations occur makes no sense because it penalizes those injured workers who are slow to heal. Some injured workers, due to the severity of their injuries or the slow healing time of their bodies, are going to take more than the requisite time under which the employers are obligated to do whatever the bill says they have to do, which is not much.

It seems to me also that the provision on age 65 and over may well run afoul of the charter if a court eventually decides that mandatory retirement is unconstitutional, but the penalty provisions provide no deterrent. The equivalent of one year's benefits for a worker can be structured in to a large employer as part of the cost of doing business. There is no real penalty there.

Simply offering someone a job for six months and a day, cutting him loose, effectively eliminates all possibility of penalty and allows the board subsequently to deem that person capable of the job he was doing for the last six months, and relieves you of all possible future premium liability, as well, with respect to that worker.

The loopholes are enormous. Really, there is no duty on the employer to do anything. As a lawyer reading the first subsection, I think that if the job has already been taken over, I could argue successfully, if I were representing an employer, that the act does not require me to bump the person who has filled the space. There is no duty of reasonable accommodation as there is in the Human Rights Code.

It does not do for the minister now to say, "We are going to instruct employers, through whatever mechanism in the act, to implement this in the spirit and intent of the Human Rights Code." Having a parallel bureaucracy, a parallel set of legal precedents and an act designed to accomplish fundamentally different purposes that are, with exceptions, not consonant with the sorts of concerns important in the workers' compensation system, is not the way to go about implementing a real attempt at reinstatement rights.

It is important to put reinstatement rights in the Workers' Compensation Act as a system or a code unto itself, because it is important to tie that in with the benefit periods leading up to the point where reinstatement occurs. It is important to tie that in with rehabilitation efforts and the whole mechanism of getting someone back to work. You cannot have two separate acts with two separate purposes trying to accomplish one fuzzy objective.

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I am probably close to my 15 minutes, but I reiterate that these are three very specific points that we have decided to pick up on; it in no way is

an indication of our satisfaction with the rest of the bill. Again, we intend to adopt the forthcoming submissions of the Union of Injured Workers on the more political aspects of the bill itself. My colleague Mr. Anderson may have a few comments to add and he will field any questions that the members may have.

Mr. Anderson: There are simply a few comments I would like to make to pick up on what Mr. Wilson has already said. I think it is noteworthy that, as Mr. Wilson has stated, what this act really is about is giving the board more discretion to—the proper verb to use in polite company escapes me—to make decisions affecting injured workers. The interesting sort of contrary trend in this bill is found in the transitional provisions with respect to older injured workers. Here we find just the opposite happening.

Under subsection 45(5), the board has exercised its discretion to adopt a new policy which has had that effect on injured workers that I am unable to describe in these proceedings.

In my reading of subsection 135(3), as it would be enacted if this bill were to pass, the board's new policy would be given legislative content, would be made mandatory instead of discretionary. In fact, it would be even worse, because what subsection 135(3) says is that a worker gets a pension supplement only for such period as "the worker co-operates in a board-authorized vocational rehabilitation program which could help the worker to return to work."

As someone who also does unemployment insurance cases, I can tell you that the concept of its having to be an authorized rehab program is very problematic. That is precisely the basis on which many workers are denied unemployment insurance benefits. They go out and in good conscience attempt to enrol themselves in school or whatever and they are told this is not an authorized program and therefore they are not entitled to benefits.

Mr. Wildman: No longer available for work.

Mr. Anderson: They are no longer available for work. Precisely.

With respect to the other transitional provisions, why is there no right to rehab, such as it is, for these workers, why is there no right to reinstatement for these workers? I would also like to say that, in my view, the rights to rehab and the rights to reinstatement, quite apart from being vacuous rights, are superfluous. They are superfluous to a dual award system such as we have here.

First of all, with respect to the so-called right to rehab, if I may say so, I think the government's propaganda on this point has been incredibly dishonest. What workers are granted in fact is a right to an assessment, and they are granted that right by subsection 54a(6). Of course, an assessment is a prerequisite to an economic-loss-based pension. You have to do an assessment, you have to have some sort of information to justify this decision you are going to make with respect to injured workers, and so it is superfluous to provide this in the bill because the board would do it anyway.

The other point, and I suppose this comes back to the ways in which the board's discretion has been exercised to the detriment of injured workers are now being given legislative content, is we see in subsection 54a(4) an express restriction of the length of a job search to six months plus possibly another six months. This had never been a matter of formal board policy. Up until the

new subsection 45(5) policy, it was possible to get job search supplements for workers for quite extended periods of time. Now we see legislatively an endorsement of the board's policy.

Further, we see under this so-called right to rehab this peculiar notion that it lasts only so long as you are on subsection 40(1) benefits; only while you are on temporary total benefits can you get rehabilitation. This is a further restriction in terms of what injured workers currently get.

With respect to the so-called right to reinstatement, Mr. Wilson has already commented on the fact that there is no duty to accommodate, which is something which the Human Rights Code, of course, provides for. But again, to return to my earlier point, I think it is a completely superfluous right, quite apart from all of its weaknesses. Smart employers will, and in fact, in my experience do now reinstate their workers in order to create evidence to demonstrate that there has been no economic loss, to show, under the current legislative regime under which they are reinstated, that there is an appropriate modified job available to them with no economic loss and no wage loss. Accordingly, when they cannot do that job, they are denied benefits.

Under this new system, smart employers will reinstate their workers, employ them for the six months, then lay them off. They will have established a body of evidence which will be very difficult for injured workers to refute that there is no economic loss suffered by this worker. So again, this so-called right is, in any event, superfluous in my view, in the structure of the act.

Those would be my comments in addition to to Mr. Wilson's. The two of us will be happy to field any questions.

Mr. Chairman: We have a couple of minutes left for questions.

Mr. Wildman: I will be very brief. I do not know whether you gentlemen were present when Mr. Fink made his presentation.

Mr. Anderson: I am familiar with Mr. Fink.

Mr. Wildman: I thought you might be.

Mr. Anderson: But I am not sure how he finked out on us this time.

Mr. Wildman: You might be surprised to find out that his presentation essentially was that this bill should be withdrawn because it would not work, and that he said the dual award system would not work and would just lead to endless litigation.

Mr. Wilson: Knowing Mr. Fink, maybe we can change all of our comments now. If he is on our side, I am not sure—

Mr. Wildman: His argument was that in Florida there is a dual award system, a wage-loss system. In that jurisdiction it has led to endless litigation and arguments over what, in fact, the appropriate wage-loss figure should be.

I must say that I was surprised to hear that from Mr. Fink, but it does sound as if it might be a logical result of this kind of legislation. Do you have any comment on that?

Mr. Anderson: That there would be endless litigation?

Mr. Wildman: That you would have a terrible time arguing between the employer, the board and the employee, the injured worker, as to what was an appropriate figure for wage loss.

Mr. Anderson: I think that is exactly right. In fact, it is for precisely that reason that the appeal rights of injured workers are so markedly restricted. One of the questions we have is, given that under the current structure the board is given sole authority to deal with the questions of reinstatement, it is unclear to us whether or not, if there has been an offer of reinstatement, that would deprive the tribunal of jurisdiction in the case of an economic-loss appeal, because that is obviously one of the factors it would have to consider.

I think you are right, that it does invite all kinds of litigation costs, but I think some of the parts of the bill that we find most unsavoury are designed to deal with that question by reducing appeal rights.

Mr. Wildman: That is a very important point. I think, from my own point of view, the fact that not only people who are representatives of injured workers before the board feel this bill should be scrapped but that people of the ilk of Mr. Fink also think the bill should be scrapped, should prove to the whole committee that obviously this bill does not please anybody.

Mr. Chairman: Let us move on. We need a quick question. We are virtually out of time and Mr. McGuigan had a question, as well.

Miss Martel: I have a question concerning discretionary power and I am glad you raised it. Having been a former board employee, it is something that worries me a great deal.

I raised the question with the minister about deeming as it occurs now under the pension supplements and how unfair that policy was. The minister said to me, in response to the question, that there were protections in this bill that would not allow for that kind of thing. Given that you work with compensation cases now and the present supplements policy where deeming occurs, do you see any protection under the bill that is going to do away with deeming and the policy of deeming?

Mr. Anderson: The minister must be reading a different copy of the bill from the one we have available to us. No, we have not seen anything like that at all. I would assume, if I might—perhaps I should not assume. I wonder if what the minister is suggesting is that the regulations which are going to be made will in some way address this. But the problem then is the one that my colleague Mr. Wilson has identified.

Miss Martel: Even if you have the ability to make regulations, you do not see that this is going to offer people any more protection, do you, if the regulations are established by the board?

Mr. Wilson: I assume the regulations being established by the board would be what it would otherwise hold to be its policy. Certainly our experience in the past has not given us great hope that this is going to be (a) fair to injured workers or (b) in any way limit the wide, sweeping discretion that is given under the act in terms of providing real, concrete criteria as a basis for adjudication.

Miss Martel: Is there any mechanism that can be put in place that would make the establishment of regulations fair, in your opinion? I am not sure if you were here for the previous organization, which suggested you could have some kind of advisory body that sat on an ongoing basis to look at those questions of what is suitable and modified work, etc. Do you see that as a possibility or have you thought about it, actually?

Mr. Anderson: It seems to me the problem is that ultimately someone has to apply the regulation. Someone has to decide whether it is suitable or modified work. There are thousands of different jobs in this province. There are hundreds of thousands of injured workers every year. It is not at all clear to me how you can regulate with that degree of specificity.

In any event, it seems to me that the process of consultation is something which I can tell you is a considerable drain on the resources of injured workers' advocates. We have been put in a position of being constantly kept off balance by the board in the last two years, because every time we gear up to fight one of its retrograde policies, it introduces another one. The prospect of continually trying to deal with highly paid employer reps on advisory councils is not one which delights me.

Mr. Wilson: The time to consult injured workers is before you implement the legislation, not before you start clarifying it.

Miss Martel: I agree with you.

Mr. Chairman: Can I give the final question to Mr. McGuigan?

Mr. McGuigan: Thank you. On page 9 you say, "A particularly astute employer would simply provide the job for six months knowing that the cost thereof would be more than offset by the premium savings to be had once the injured worker is consequently deemed capable of by then nonexistent employment."

I do not understand where the premium savings would come once you got that person off your payroll. Would your premium rate not be unaffected?

Mr. Wilson: The schedule 2 employer comes off based on the specific individual involved. I suppose with most employers we are talking about simply lowering the accident rate or not expanding the accident rating or the global size of their responsibility for the consequent amount of misery caused by the accidents in their plant.

What I do not mean in here is that it is going to come off dollar for dollar; no. What is meant here is—let's take a schedule 2 employer; that is probably the best example, I guess.

In schedule 2, the individuals involved in the ongoing process of the giving of benefits have a much more specific relation to your premiums. If the injured worker is essentially cut off with no further ongoing benefits, then the cost of doing that is to be assessed, I suppose, in a cost-benefit ratio against the cost of keeping the guy on. In other words, what I am saying is that you figure the amount you can pay for six months and a day, figure the amount that your premiums are going to be escalated over the long run by keeping this person at a very high wage-loss payment to offset —

Mr. McGuigan: Are those costs not pretty well diluted among a whole rate group rather than an individual employer?

Mr. Wilson: Yes.

Mr. Anderson: Actually, if I could speak to that, Mr. Wilson was speaking about schedule 2 employers who are not members of rate groups. They are in fact assessed on a dollar-for-dollar basis their cost experience with workers' compensation.

Schedule 1 employers have historically been lumped into groups, and I think that is what you are thinking of, but I think it is important that you know that the board is moving towards a concept of experience rating. They are moving very much away from this concept of a no-fault insurance scheme where you simply get assessed on the basis of the collective experience of your group towards a system where you are in fact assessed based on your individual experience.

The board has what it calls the NEER program. I am not sure what the EE stands for, but basically it is an experience rating system which they are implementing.

Mr. Chairman: New experimental experience rating.

Mr. Anderson: Thank you. What it calls for is that at the time of the accident or shortly thereafter, the board's accountants sit down and put their minds to what this injured worker is going to cost the board through the rest of his life. Of course, they make that decision based on the period of time they think he or she will be totally disabled and the period of time they will receive partial benefits under the current system. That is actually one of the questions I have. I do not know what happens to temporary partial benefits under this bill. Then, they also make a determination as to what the person will receive in the nature of a pension and in the form of supplements.

A year later, they re-do the whole calculation and they give the employers the benefit of any improvement in the cost scenario. They also charge them for any way in which the situation has worsened.

What we are concerned with is—and believe me when I tell you I have seen employers do this now—a smart employer will rehire the worker and will create evidence that there is no economic loss. Here is the worker; he is working at the same salary he was earning before. I have heard of cases of employers saying to employees: "Just come and sit on a stool all day. We will pay you your same wage rate." That is a real case scenario.

Mr. McGuigan: I do not have any problem with that, but I do have a problem with your statement. I am certainly not conversant with all the details of how the system has worked, but I think what you are telling me is that you could retroactively take the cost of a person's accident off of your individual company's experience. I do not see how any system that was a legal system at all could retroactively take that person off. If you are injured today and your case starts from then on, how could you say, "Six months down the road, we fire this guy or this woman, and we are no longer involved with him or her"? It seems to me that experience still goes back to the day when the accident happened.

Mr. Anderson: There are two points I would like to make. First of all, the cost —

Mr. Chairman: Can you make these quite brief, because we are running late.

Mr. Anderson: The cost of the accident depends on what you expect will happen to the worker, whether or not you expect that he will be re-employed, for example. That is point number one.

The second point is that what we expect employers will do is that they will hire the worker immediately. So, in fact, the cost, from the point of view of the board, will be quite low, because it will not have to pay a wage-loss pension or an economic-loss pension to this worker. So the board will assess them on that basis. Six months and a day later, they will lay the worker off. The board's cost assessment will have been based on the worker's continuing employment, and that in fact will not happen.

Mr. Chairman: Thank you for your presentation.

The next presentation is from the Canadian Auto Workers, Local 2213, which I believe is the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada. I believe we have with us—and I am sure they will correct me if I am wrong with my pronunciation—Cheryl Kryzaniwsky. Is that reasonably close?

Mrs. Kryzaniwsky: Absolutely. No correction necessary.

Mr. Chairman: Mr. Mancuso and Mr. Crocker. Welcome to the committee.

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NATIONAL AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS UNION OF CANADA

Mrs. Kryzaniwsky: I will introduce myself first. I am Cheryl Kryzaniwsky and I am president of Local 2213, which is a local in the airline division of the Canadian Auto Workers. With me today, as you have mentioned, is Mr. Crocker, on my left, who serves as the CAW's Workers' Compensation Board co-ordinator, and on my right, Enzo Mancuso, who will present our brief today. Mr. Mancuso serves as our national health and safety co-ordinator for the local union.

I just want to spend a minute of the committee's time, before we read our brief, to give you a brief explanation of our local union and the work our members do. Of course, as transport workers, workers in the transport field fall under federal jurisdiction most of the time. Obviously, one of the exceptions is workers' compensation, as it is structured entirely under provincial jurisdiction.

We are here today on behalf of the approximately 2,000 workers we represent in Ontario. They work for a variety of companies, airline companies, Wardair, Air Canada, Air Ontario. They work in different physical locations, such as reservations offices, where they spend a lot of their time listening on the telephone and typing into computers. They work in airport locations, where they spend a lot of their time lifting baggage, putting it on belts, lifting coupons, etc. Of course, they work as maintenance mechanics and baggage handlers and that is fairly self-explanatory as to the type of work they do.

I just wanted to stress today that because our membership is spread, we are really looking to Ontario to be a leader in any changes that may come to the Workers' Compensation Act. I have to say that Bill 162 in its present form is only going to lead us in one direction and that is backwards.

I am pleased today, and I would like to state to the committee that I am pleased to have received standing, so that we can present our position and our brief today. However, I do want to say that I am extremely disappointed at the number of organizations, fellow unions and community groups that have not been given standing in front of the committee. We will be happy, at the end of our brief, to answer any of your questions or any of the concerns that you may have arising out of the contents of our brief. I would just like to stress that the overall position of CAW Local 2213 is that this bill should be totally withdrawn.

Mr. Mancuso: I would like to thank the committee for giving our local union the opportunity to express our concerns about Bill 162, the government's proposed amendments to the Workers' Compensation Act.

Local 2213 of the Canadian Auto Workers represents some 2,000 workers in Ontario employed by Air Canada, Wardair, Air Ontario and Air Portugal. The majority of our members work throughout Ontario as reservations and airport passenger agents. On March 1, 1989, the CAW national union presented a brief on Bill 162. We are in total agreement with all the concerns expressed in that submission.

In our presentation, we will focus on the problems encountered by injured workers in the airline industry as they attempt to deal with the Workers' Compensation Board. We will examine how Bill 162 fails to respond to the concerns of our members and how it essentially limits their rights and benefits.

The Minister of Labour (Mr. Sorbara) promised that Bill 162 would respond to long-standing concerns of injured workers and that the proposed changes would provide fairer and more comprehensive benefits for workers suffering permanent disability.

After a careful examination of this bill, we are forced to conclude that it fails miserably to achieve these objectives.

Long-standing concerns of injured workers: delays and red tape, claim recognition and repetitive strain injuries. Bill 162 does nothing to address the above-listed concerns. Instead, if this bill is passed, it will reduce rights and benefits by introducing wage-loss payments based on imaginary jobs, limiting the right to rehabilitation, limiting the right to reinstatement and diminishing seniority rights.

In our experience, the most frequent complaints of injured workers on compensation are the red tape and constant delays in providing benefits. One of our members who injured her back while loading bags on to a baggage belt has had four claims adjudicators assigned to her file in less than two years. This is what she told us during an interview to prepare her appeal:

"Periodically, they stop payments of benefits. Then, you figure there must be something wrong with your file. You phone your adjudicator and find out that someone else is handling your claim. Once I was cut off benefits for a month because my file had been lost. They left me hanging for all that time because, as far as the board and the computer were concerned, I did not exist."

Our members, who have heard these horror stories, try to avoid dealing with the board, even if it means settling for less benefits from a different source.

Most of our members belong to our group income disability insurance plan, GIDIP, which is administered by a board of trustees made up of workers. We have found some members do not report work-related injuries and refuse to appeal a negative Workers' Compensation Board decision in order to avoid dealing with the WCB. Instead, they turn to GIDIP for financial assistance.

The inability of the WCB to properly handle legitimate claims puts an unnecessary financial strain on worker-paid GIDIP. In addition, by using GIDIP rather than the WCB, the actual number of work-related injuries is hidden. Bill 162 contains no provisions for cutting red tape or eliminating delays.

Claim recognition: Bill 162 does nothing to make it easier for injured workers to have their initial claim accepted by WCB and does nothing to discourage employers from delaying workers' claims.

One of our members reported a work accident to her supervisor. After suffering a recurrence of back pain resulting from her accident at work, she discovered her supervisor had put her on sick leave. Her claim was delayed considerably as a result of employer negligence.

Bill 162 deals with matters that apply only after the worker's claim has been accepted. It does not address issues about initial claim acceptance or employer's delay tactics.

Recognition of repetitive strain injuries: Repetitive strain injury, RSI, is an issue of profound importance to our members who make reservations by typing at a computer for eight hours a day. They are at high risk of getting RSI because they perform repetitive motions in poorly designed work stations. Many of these injuries remain undocumented and many of our members under the present system would remain uncompensated with little or no access to rehabilitation. Bill 162 does nothing to make it easier for our members to get compensation for repetitive strain injury.

Payments based on imaginary jobs: Under Bill 162 there will no longer be lifelong disability pensions for permanent disabilities. There is provision for compensation for economic loss, but this applies only to the difference between pre-accident earnings and what the WCB deems the worker will be able to earn after the accident.

Under this system, if an injured airline worker decides to be rehabilitated as a computer programmer, he would not qualify for a supplement, because working as a computer programmer could pay more than working as an airport agent. What the bill completely ignores is that the worker may never actually hold the job she or he has been deemed able to perform.

Right to rehabilitation: We believe that all injured workers have a right to vocational rehabilitation which is designed to suit each individual worker.

Subsection 54a(1) of this bill requires that a representative of the Workers' Compensation Board visits the worker within 45 days of the accident and does a rehabilitation assessment within six months. Decisions about whether or not a worker is entitled to rehabilitation or the kind of services that are needed are left entirely to the board.

We find subsection 54a(1) totally unacceptable. Every injured worker has a right to rehabilitation. It is wrong that the board has the power to deny rehabilitation to any injured worker.

Right to reinstatement: Injured workers, under section 54b, get little protection when it comes to reinstatement. There is only a limited provision to reinstate workers for up to two years after an accident and employers can force an injured worker out after six months. Injured workers with less than one year seniority have no right at all to reinstatement.

We feel that injured workers have a right to re-employment. Employers must be forced to take injured workers back without any restrictions and they should be forced to fix or modify the workplace in order to help injured workers as well as workers who may suffer an injury as a result of improper or inadequate working conditions.

Erosion of seniority rights: Under subsection 54b(8), a low-seniority injured worker can bump a higher-seniority worker. The following example illustrates how ignoring seniority rights creates more problems for injured workers than it solves.

Our members at Air Canada who work at airports require a minimum of 20 years' seniority to hold a position as a host in the first-class Maple Leaf Lounge. After 20 years of lifting bags and pushing wheelchairs, our members look forward to work which is less physically demanding. Resentment is inevitable when positions of choice are staffed without regard for seniority.

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Returning injured workers need understanding, encouragement and help from colleagues. They do not need the extra stress or resentment directed their way. There is no justification for tampering with a seniority system when employers can modify the workplace or work practices to accommodate injured workers. We feel it is cruel for the government to propose legislation which allows employers to create a hostile climate for returning injured workers.

In conclusion, we want to say that our local joins the Canadian Auto Workers' national union, other unions, injured workers' organizations and the Ontario Federation of Labour to have this insensitive bill withdrawn.

In its place we ask the government to introduce a new bill that forces employers to identify the cause of work-related injuries and forces modification of workplaces to accommodate injured workers. A bill is needed that will put an end to the red tape and delays that currently exist. A bill is needed that makes it a right for all injured workers to be rehired and rehabilitated without any limitations and to compensate injured workers fairly. To do less is to quite literally add insult to injury. Thank you.

The Vice-Chairman: Thank you very much. A couple of members of the committee have indicated interest in asking some questions of you.

Mrs. Marland: I wonder whether your members as a whole now know that with this bill, if they at present receive or in the future were to receive a permanent disability pension, that pension would end at age 65. Is it now common knowledge that, as you say in your brief, there are no lifelong disability pensions for permanent disabilities?

Mrs. Kryzaniwsky: Absolutely not. I would say the majority of our members are not aware of the changes that would occur as a result of the bill.

Mrs. Marland: To your knowledge, were any of the locals of your

union ever approached by any government representative to ask them what kind of economic effect that might have for someone with a permanent disability who was a member of your union?

Mrs. Kryzaniwsky: We have had no input whatsoever. I cannot speak, of course, for the other local unions, but certainly from the airline division there has been no input.

Mr. Crocker: There was no input on that portion, or any other portion of this act actually, until after it was introduced.

Mrs. Marland: In very crass terms, obviously if you have a permanent disability and it has gone through the process of assessment and award as a compensable injury and you now have a permanent disability, the fact is, as we all know, that it does not go away because you have a birthday and it happens to be your 65th birthday. The older you get the more your alternative sources of income through whatever efforts you are able to make are diminished.

You are here speaking on behalf of your membership because you see the implications of this bill. I do not know how many days now we have been sitting on this bill—we are certainly into our third week. We have not seen any indication that the government plans to amend this legislation. There are some amendments we have heard about, but from anything that we have heard in questions from the government members of the committee, which is all that we can speak about at this moment, we do not seem to have any indication that there will be major changes.

What I would like to ask you as representatives of your union, of your own locals, is: What are you going to do? You have looked at the bill. You recognize the concerns that you have on behalf of your members and you are here representing your members. How are you going to get your members to help you with this gigantic task that you have, which would be to convince the government that the bill is not fair to employers or employees as it is now written?

Mrs. Kryzaniwsky: I know certainly that the Canadian Auto Workers, as an organization, has put an awful lot of time and effort, especially under our workers' compensation committee, into trying to convince this government that this bill is just totally unacceptable. There is a card campaign going on which hopefully will raise awareness of workers about what the bill does.

Obviously one of the major problems we have is that workers on the one hand out there, especially in the airline industry, who are facing massive job loss as a result of some federal legislation out there, are not looking right now to the contents of a bill designed for injured workers. So we have to do some work in our workplaces to ensure that our membership becomes aware of the contents of this piece of legislation.

As I said, we have joined with the other locals in Ontario to, I guess, heighten awareness with some literature that we have put out, with the cards that we are asking them to return to the government asking it to withdraw the bill.

Mrs. Marland: That is the answer I was looking for. I did not know that you had a card campaign. The members are being encouraged to write to their member or to the government.

Mrs. Kryzaniwsky: Absolutely.

Mr. Carrothers: I was intrigued by the fact that you mentioned in the presentation that your union has a group or disability insurance plan and the implication was that many of your members seem to sort of apply against that and ignore workers' compensation. I am assuming they like that plan. I am assuming they find that it works fairly, that it provides them with what they think are fair benefits.

I want to look at the comments that you made regarding the deeming. Since we are shifting to the concept of economic loss under this bill, does this bill not, under subsection 45a(3), this deeming provision, essentially work the same as the disability provision in that group disability insurance plan that your members seem to prefer works? In other words, are they not going through essentially the same kind of exercise, looking at what employment they could do and whether there is similar employment? It is a whole sort of intellectual exercise. Are they not very much the same thing?

Mr. Mancuso: To answer the question of why our members seem to like our group disability plan, the reason they turn to the group disability is because they are threatened by the whole bureaucracy of the WCB. Remember that the group disability is paid in full by our members. All the workers pay the whole shot.

In the past, the workers on the board of trustees who administer this plan would pay all the people who would apply, whether it was work-related or not. But now they are realizing that it is going to go bankrupt, it will not be there. So now they are saying, "Listen, if we feel it is work-related we'll pay you, provided you appeal your claim to the WCB, because that is where you should be."

Mr. Carrothers: But does the plan not—I am not sure whether your union is running it or if it is bought from an insurance company—contain a provision that workers get a benefit if they cannot perform employment that is reasonably similar, etc., to the work they were doing or to their experience, etc.? There is a phraseology in there which I am familiar with, and that is the test that is applied, which seems to be the very test that your union, if it is running the plan, is then applying in these cases of disability.

Mrs. Kryzaniwsky: No.

Mr. Carrothers: I am wondering how it would not or why it would not or why it is not a good idea to take this workers' compensation system in that same direction. It seems a logical improvement to me. I guess I am trying to find out why—

Mr. Crocker: I know of no insurance plans in any of the CAW agreements that allow for any form of deeming. A medical qualification is all there is.

Mrs. Kryzaniwsky: It is "rehabilitation for own work" in our insurance plan. I can certainly provide you a copy of our plan, but ours is "rehabilitation for own work."

Mr. Carrothers: "Own work." It does not go in terms of "similar"?

Mrs. Kryzaniwsky: No.

Mr. Carrothers: Because that is often in those plans.

Mr. Crocker: I know of no CAW plan that has that provision.

Mrs. Kryzaniwsky: Another major problem that we have is just a lack of assistance by employers. One of the reasons our people have turned to the disability plan is not only because of the red tape and bureaucracy of WCB, but because of their lack of knowledge of what should happen when they are injured in the workplace. Certainly there is no information on what should happen coming forth from their supervisor or employer. So they turn to the disability plan because that is their only option as they see it. Obviously we advertise that option and they pay their own premiums. But it is own-work rehabilitation.

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Mr. Carrothers: For the long-term plan it is own work.

Mrs. Kryzaniwsky: Yes, until age 65.

Mr. Carrothers: What I seem to sense out of this is that the problem you are really striking at, at least the one I find compelling, is that the internal mechanisms of the WCB may not be up to dealing with this. In other words, it is not that these types of changes are necessarily the wrong way to go; it is that you are not sure it will happen, because the board perhaps has not got enough internal wherewithal. I even got a sense that some people were questioning its integrity to even implement this type of thing. I guess this is where I am struggling.

The kinds of changes being proposed, just taken as a theoretical basis, seem a logical way. What you are going to do is compensate people who are injured based on a wage situation and try to keep them in the same financial situation they were in, which is what happens in car accidents, in many areas where people are hurt. You can never put them the way they were, you can never erase what happened, but you can try to keep them at least at the same economic level. That seems to be where this is going. I do not sense you criticizing that; you are questioning more whether it will happen. Is that a fair statement?

Mr. Mancuso: The problem with deeming is that you are talking about imaginary jobs. They are not really there.

Mr. Carrothers: If I could comment, though, your plan may not deal with it because you have own occupation, but from my experience most plans have a long-term disability plan which talks in terms of a similar occupation. There is a fairly large body of jurisprudence and a large body of experience on trying to take a person, look at what they can do physically, look at the types of jobs they might have had, the types of jobs their experience lends them to be qualified for, the economic status and the whole range of factors, and comes up with the question of whether they could or could not receive a benefit under the insurance plan because they cannot find basically similar work. It does work, from what I have seen. Obviously, there are arguments and disputes, as there will be in any system, but by and large it works.

The regulations are not here so I guess I can accept that there is a problem as to what might happen, but shall we just assume that you can come up with regulations that talk about those factors, the type of work a person is suitable for, what their experience would lend and be able to carry on, the economic level and so on, whether the work is available, the type of job in the community he lives in? You can come up with a test, and it works. I have seen it work. This is where I am having difficulty understanding how you feel it would not work and why you pick on it in such a way.

Mr. Crocker: It works to take employees off benefits, but how else does it work?

Mr. Carrothers: It works to provide a compensation. Your union may not have it, but many unions have that type of plan and have that exact type of test.

Mr. Crocker: Let me suggest to you strongly that it is not just our union. The word "deeming" was not even part of the trade union movement until the changes in subsection 45(5) a couple of years ago.

Mr. Carrothers: I understand that.

Mr. Crocker: That is when it came in. We have certainly been dealing with all kinds of insurance programs—I have—for over 20 years, and I have not even heard the word "deeming," to be perfectly honest.

Mr. Carrothers: No, you would not have heard the word "deeming." The nomenclature here is different. But when you pull apart what is there and the implications of how it works, you come back to that: You take someone who cannot do what they did and find out what they can do now.

Mr. Crocker: It works to take employees off benefits, but how else does it work?

Mr. Crocker: How are you suggesting that it works, then? It works for one thing and one thing only: to take an injured worker off benefits, whether it be WCB or long-term disability insurance. That is the only reason that deeming is there in the first place.

Mr. Carrothers: You have to have some mechanism to say whether—

Mr. Crocker: You have to have some mechanism. We do not.

Mr. Carrothers: There has to be a mechanism.

Mr. Crocker: If an injured worker cannot be returned to his or her job, then he certainly should be compensated.

Mr. Carrothers: Full stop.

Mr. Crocker: Sure.

Mr. Carrothers: No question of taking rehabilitation, no question of trying to find something similar.

Mr. Crocker: This bill does not provide them with rehabilitation either, though. That is the problem.

Mr. Carrothers: We are not talking about what the bill does. You made a statement. I just wanted to follow that up, because it seems to me that, okay, they cannot do the job—it may require heavy lifting and they cannot do it—but there may be something else they can do and it seems to me you want to get them into doing that.

Mr. Crocker: Absolutely. We do not have any problem with that. We agree with it.

Mrs. Kryzaniwsky: We would like them rehabilitated.

The Vice-Chairman: Mr. Carrothers, a couple of members have

indicated that they would like to ask supplementary questions to your question. If we could move on to those short supplementaries, then Mr. Wiseman had some questions he wants to ask.

Miss Martel: I do not want to pre-empt Mr. Carrothers, but I think he was trying to ask: Do you think the principle is a good idea and if the board had enough gumption it would work, or do you think the whole thing stinks? I think that is the question you have yet to answer, and I would certainly like to hear your opinion on that.

Mr. Mancuso: I think our answer is yes to both questions. It stinks, and the way the board is, we do not have any faith in the board.

Mrs. Kryzaniwsky: And we do not have any faith in deeming. There is nothing we want more than to sit back and see workers who are injured on one type of job be rehabilitated where they can earn and keep the economic level of that job and be returned to the workforce. That is what we want to see.

This bill does not provide for that. It provides for somebody out there making some imaginary guess at what they may be able to be retrained to do, even though they never hold that new position, and all that does is force them off of a current benefit and possibly reduce the benefit because somebody has made a guesstimate that they might be able to return to be a computer programmer or something else.

Miss Martel: Do you think there are any regulations in the world that the board puts together that are going to save workers from all those problems?

Mrs. Kryzaniwsky: No.

Mr. Crocker: Not in our past experience, anyway.

The Vice-Chairman: Mr. Dietsch also had a supplementary.

Mr. Dietsch: I would like to go back to your comment with regard to your own insurance plan providing vocational rehabilitation to your own job. Are there time limits to that? If you cannot get rehabilitated to your own job, what happens? Do you stay on permanent sick plan until you are age 65? Is that what happens?

Mrs. Kryzaniwsky: Yes, we have a short-term plan, followed by a long-term plan with different percentages of benefits. Both of them deal with rehabilitation into the worker's own job. We obviously like to see activity around rehabilitation because there are different job functions within that job.

Mr. Dietsch: What would be the benefit level on both of those? The short-term would be what?

Mrs. Kryzaniwsky: From 70 to 75 per cent, and I have to have a look in the booklet.

Mr. Dietsch: And the long?

Mrs. Kryzaniwsky: And long-term, 65 to 70 per cent.

Mr. Dietsch: Of the gross?

Mr. Mancuso: Which is less than it would be if we were on workers' compensation.

Mr. Dietsch: Yes, okay. Thank you.

Mr. Wiseman: I will be short. On page 5, you mentioned subsection 54a(1) about rehabilitation and so on, and then over on page 6, on subsection 54b(8) you talk about somebody, as an example, who might have been hurt as a luggage carrier. A bonus seems to be when you are there 20 years or so, you might get in the Maple Leaf Lounge and you have trouble with your membership.

I would take it from that—I do not know whether I am right or not—that you would frown on the person with 10 years who was on workers' compensation and had hurt his or her back but could handle working in the lounge, rather than do what I had thought unions were out there to do too, and that is to help all employees whether they were there 10 years or 20 years.

You would be able to sell that to the 20-year person, saying that your colleague or your brother or sister has an injury, that he or she can handle that job and get relatively the same rate of pay, and if society is going to believe in the movement of workers and doing things for one another, that the 20-year person overlook that.

I believe that, all things being equal, seniority should rule. But if you were put in that sort of a situation with workers' compensation and the employer came along and said, "We have that job coming up in the Maple Leaf Lounge for this injured worker but there's another worker over here who has 20 years," which one would you go with?

Mrs. Kryzaniwsky: The problem, Mr. Wiseman, is not quite, I do not think, as simple or as defined as one job in one Maple Leaf Lounge. The problem is that we represent workers in a lot of different work locations and nobody bothers to look beyond what is easy, beyond parachuting them back into one position, which causes things like resentment among workers who were hoping to be able to bid for some of those jobs with their increased seniority.

What we are saying is that what we want —

Mr. Wiseman: Would you support the workers' compensation for that?

Mrs. Kryzaniwsky: Just a sec; let me finish. What we want to do is have them look at modifications of the work site. Everybody is overlooking things like, it could take \$1,000 or \$500; you can modify a work site so that you could return an injured worker as opposed to narrowing it in so that, first of all, this injured worker can only do a few jobs, which causes resentment and embarrassment for the injured worker because he feels restricted, and on the other hand, there is that resentment there from the people who continue to work.

The injured worker does not want to be embarrassed by narrow restrictions on where he can work, and the workers who are left do not want the resentment of having people parachute in above seniority level.

Mr. Wiseman: But if they had a back injury—and you are really not answering it, I do not think.

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Mrs. Kryzaniwsky: Sure I am. Then you talk about putting them in a reservations office.

Mr. Wiseman: I understand that the luggage carriers, as an example, work for 20 years, then look towards going into the Maple Leaf Lounge because they have lugged luggage for all that time. I am saying to take one who has lugged luggage for 10 years and is still a member of the union, and if they—the employer and workers' compensation—decide there is an opening coming up in there, I think he could handle that. It is a lot easier fixing drinks and whatever than it is moving luggage.

As an organization out for all employees, I just wonder why you would not support that person going in, would not support being able to say to the 20-year veteran, "This person had the misfortune of having back surgery or whatever it is, and we're all brothers and sisters together, so you'll get it the next time, but now it should be the one with 10 years."

Mrs. Kryzaniwsky: As opposed to what, Mr. Wiseman?

Mr. Wiseman: You are saying they should modify the workplace or something. All I am saying is that they could handle that job. It is not a meaningless job; it is one they could do.

Mrs. Kryzaniwsky: But they can handle other jobs. That is all we are trying to say.

Mr. Wiseman: We hear of workers' compensation and the person who is trying to bring them back into the workforce. I just hope the union and the employer are not throwing roadblocks into every place they go, but rather—

Mrs. Kryzaniwsky: You can certainly count on us not to throw roadblocks into our members' ability to return to the workplace—absolutely.

Mr. Wiseman: The 10-year one, like I said, is paying dues the same as the others, and if we are thinking of all being brothers and sisters, we should do that.

The Vice-Chairman: Mr. Wiseman, the president of the local has made clear that the local would like to have its members re-employed in whatever way. If I understand what you are saying, though, it is that there should be a wider consideration of what rehabilitation and reinstatement mean.

Just in closing, can I ask one question? Have there been ergonomic studies done, say, with regard to workstations for the people who are in the reservation offices working in front of computer screens and so on, to ensure that not only injured workers, but the workers who are there because that is the job they have been hired to do originally, are not injured and that they are able to perform that work in such a way that we can avoid all the kinds of problems you have suggested?

Mrs. Kryzaniwsky: The studies have been done, but what you have to keep in mind is that those ergonomically designed workstations are not mandatory by law. They cost money, so they do not exist.

Mr. Dietsch: Can I just get a clarification of that? Did I hear you say the companies will not revamp the workstations to prevent injuries in the first place?

Mrs. Kryzaniwsky: That is what I am saying.

Mr. Mancuso: I want to give you a brief example: checking bags at an airport. A lot of our people get hurt because they have to kneel down to put the ticket on the bags. They constantly keep kneeling down and then weighing. It would be very easy to raise the position so that people would not have to bend down. It would be a good thing, let's say, to bring an injured worker back to. He could work at his position of check-in attendant. Just modify the work position so he is able to perform that job without getting hurt.

It is very easy to take the easy way out, which is to send all the injured workers to the Maple Leaf Lounge. That is what the employers are doing, because it is an easy thing to do. It is more difficult and they have to invest a little bit of money to change the work position, to make the change at the source that creates a problem. They do not do that. Right away it is, "Go to the Maple Leaf Lounge."

Mr. Dietsch: I wonder, Mr. Chairman, if perhaps—

The Vice-Chairman: We are short of time.

Mr. Dietsch: I was not going to ask another question. I was simply going to ask that perhaps the delegation could submit its long-term disability program for us to have a look at. I am very much interested in your alternatives.

The Vice-Chairman: Just in closing, is it your position that all this bill provides for the worker in terms of rehabilitation and reinstatement is an assessment?

Mr. Crocker: Yes, that is our position. That is all it provides, just an assessment.

The Vice-Chairman: All it guarantees is an assessment, correct?

Mr. Crocker: That is correct.

The Vice-Chairman: So that is your basis for saying you run into the problems with deeming and so on as a result?

Mr. Crocker: Exactly.

The Vice-Chairman: Thank you very much.

The next presenter is the Canadian Chronic Pain Association. The clerk informs me they are exhibits 95 and 95A, which have been distributed.

Sir, I will not attempt to pronounce your name. Perhaps you can introduce yourself to us so I will not embarrass myself.

CANADIAN CHRONIC PAIN ASSOCIATION

Dr. Kryspin: I am Jan Kryspin. I have brought my qualifications with me for you. I am a medical doctor.

The Vice-Chairman: Please make yourself comfortable, sir. You have half an hour for the presentation. It is up to you how that time could be used. It can either be used wholly for your presentation or partially for that and partially for an exchange with members of the committee. Your time is yours.

Dr. Kryspin: I need probably 10 minutes. I would like only to point out that the Canadian Chronic Pain Association was registered and incorporated as a nonprofit charitable organization because we felt, over about the past 15 years, an overwhelming need to provide rehabilitation in a more efficient way.

I would like to point out that the numbers that are nowadays made available through the Canadian Pain Foundation about the disabilities that are caused by chronic pain might, in my estimate, reach quite high numbers.

I have reviewed the material of our clinic for approximately 1,500 cases. Out of those, 200 are injured workers. This means that the problem of pain and the obstacles it creates in rehabilitation might be more significant than we usually assume.

I have listed that the Canadian Pain Foundation estimates that there might be about three million Canadians who suffer chronic pain. A significant proportion of them suffer disabilities that are caused by work injuries and also by motor vehicle accidents. They both lack proper vocational rehabilitation. I have found and we have found this to be the greatest shortcoming. The reason is that we have many difficulties presently with the Workers' Compensation Board.

There is a complexity of disabilities that are caused by chronic pain, but we anticipate, and I have seen it in my practice, that very soon we will have the same rehabilitation program with victims of motor vehicle accidents on our highways. Therefore, as you will see in the submission, we have made certain proposals about how we believe this problem can be solved.

From my experience in working with injured workers, I think most conflicts have arisen from the inadequacy of the medical model to deal with the complexity of chronic pain, because this is not only a medical problem; it is also a social problem, a cultural, philosophical and emotional program of major proportions.

In the past, most conflicts were caused by the fact that these people were assessed regarding chronic disabilities only on the basis of the opinion of an orthopaedic specialist. This, of course, over the years has led to such great pressure that now the Workers' Compensation Appeals Tribunal has recognized chronic pain as a compensable disability, but immediately it came up with about five criteria to enable them to deal with a number of problems in an unjust way.

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I have enclosed a typical case. It is enclosure D. I deal with a great number of problems like that. I would like to bring to your attention enclosure D on page 3, that claims adjudicator Miss Olynik refused his claim

with the following statement, "It has now been determined that your pain is consistent with the organic findings on file, and therefore, you do not meet the criteria for chronic pain disorder." I emphasize "is consistent."

I have listed five points that the Workers' Compensation Board considers in giving a disability based on chronic pain, let's say, on top of the purely physical disability or on top of purely psychological disability. The crucial point is point 4, "The pain is inconsistent with organic findings," because this gives practically every adjudicator and every expert who is assessing the claim a soft point through which he can interpret every individual case without any consideration of the true nature of the problem.

I am pointing out what I have to do. I do it as a director of our pain clinic but also now as the president of the association. Most of the time, I must go as a medical witness to the hearing and explain why there are so many inconsistencies in the interpretation of the criteria of the Workers' Compensation Board.

Finally, I would like to point out that it is not only our experience, but also the experience of people who are dealing with chronic pain in other countries, that a crucial key to failures in rehabilitation and to the establishment of a disability might be one factor that is usually overlooked: This is a certain, sometimes very minimal, learning disability. These people, for instance, come and work quite well as long as they are trained for the job. They keep doing the same job all these years. The moment they are injured and they cannot return to work, all of a sudden we find out that there is some kind of inability to learn how to behave in such a way so that they do not get reinjured.

We see many injured workers being injured again. They are sent back to work and they get injured again. I am dealing with a number of multiple claims and I believe that is one of the reasons. Of course, the other reason is that these people live in ghettos here. They do not learn any other language except their Italian, Portuguese or Greek. They have great difficulties in being rehabilitated, particularly if they are construction workers. Of course, there are no jobs for them in construction industries.

I have made a proposal to the Minister of Health that this problem can be solved only by establishing health service organizations. I have made a proposal to the chairman of the Workers' Compensation Board that I am prepared, on the basis of my experience, to organize a community clinic or whatever they will need—a rehabilitation clinic. I started doing this work when I was working with Dr. Ken Livingstone in Wellesley Hospital.

We were the first in Canada, besides Dr. Gregory in Vancouver, who had dealings with these problems of chronic pain and injured workers. We have, over the past 17 years, established great experience in Canada. I gave you also the overview of my curriculum vitae. I have been in medical practice over 40 years and I have spent practically all the time—originally as a neurosurgeon, then as a clinical neurophysiologist, bioengineer and rehabilitation expert—dealing with chronic pain, so everything stated in that proposal is based on very long experience.

The Vice-Chairman: Just before we open it up to questions, are you saying that in your experience because of the criteria set forward for chronic pain, if a worker is experiencing ongoing pain as a result of an injury and that pain is related to the injury, to the organic effect of his accident, the board's position is that this kind of worker then does not fit into the

chronic pain syndrome criteria and therefore cannot be compensated for chronic pain?

Dr. Kryspin: I have seen, unfortunately, many cases refused on the basis of point 4, that there is inconsistency between pain and organic findings. They claim the organic findings are consistent with the amount of complaint the worker has and therefore they claim he has been adequately compensated by getting his 15 per cent for his back injury and by getting, at best, his 10 per cent for, let's say, psychological distress, because they have failed to recognize many of the psychological aspects in the past.

But they totally disregard that with chronic pain we have a new phenomenon that includes severe disruption of health as a whole. I have in my clinic a high percentage of people who have kidney damage because of repeated use of toxic medications for many years and I have other evidence of the problems involved with chronic pain.

The Vice-Chairman: Okay. I am trying to understand your position. Basically, what you are saying is that if an individual is being compensated 15 per cent for a back injury because of organic damage to the back and perhaps 10 per cent for psychological effects, that does not properly take into account the other damaging effects of the chronic pain on that individual.

Dr. Kryspin: Yes; right.

Mrs. Marland: When you talk about organic findings as they relate to chronic pain, not being a medical person, I am wondering, does the term "organic finding" means the same as "clinical finding"?

Dr. Kryspin: No. The problem with the board in the past, because it was dealing mostly with physical injuries like fractured bones, pulled backs or even fractured spines and head injuries, was it usually used to have enough organic criteria, which means X-ray abnormal findings, abnormalities on neurological presentation, abnormalities on orthopaedic examination, that were satisfactory to determine the extent of physical disability.

But if they did not obtain proper rehabilitation, if the patient was consistently living under stress and threat of social repercussions—I have many of them who lost their families, who lost their homes, property, everything, who became totally disabled as a consequence of chronic pain with all its manifestations—then these people did not, at the time before chronic pain was recognized, meet the criteria and very often they were sent to search for jobs in vain, because nobody would hire them. The organic criteria were taken as an excuse not to provide them with proper vocational rehabilitation.

Only after there was such a great pressure from the side of injured workers' lawyers and workers' advisers and so on has the chronic pain been recognized as a compensable disability. We have opened a number of totally new problems that we have not to deal with. Organic does not mean clinical, because clinical is also psychiatric; they are not considered organic in that sense. Clinical is also psychosomatic; clinical is also behaviour. All these manifestations now have to come into consideration.

1720

Mrs. Marland: Some of the concerns that you have addressed this afternoon would zero in on those sections of this bill that deal with the assessment and the assessment time period, because, obviously, some organic

findings would not be something that might be there on the first or second assessments. Since we know that the worker has only two assessments under this bill, and if they have already had their second assessment and the organic finding ends up being some time after they have had their second assessment, they are out of luck. The injured worker is out of luck if they have already elected to have had their second assessment.

I was interested where you talked about the failure of healing in the physical, psychological and social domains, where you talked about the psychological, since even with injured workers, and I think we can all speak from experience, about 50 per cent of our symptoms are psychosomatic. So, even if we sustain an injury—I am not talking about an injury where we are talking about the loss of a limb or part of a hand and so forth; I am talking about a traumatic injury, such as a back injury—I think when you talk about chronic pain, it is very often related to that kind of sustained injury.

Would you, as a physician and as a specialist, like to comment on the psychological factor as it can contribute to an injured worker in the overall picture of their case? For example, because they have had this trauma to their back, they are now an injured worker. They have sustained that. With this bill, they have two chances to be assessed. They have got to have some depression set in, because most people have to provide at least for themselves, if not for a family, and for the mortgage and the car payments and for all of these things. Would you think that psychological factor is something that cannot really be protected in this bill, but it is something that a Workers' Compensation Act should address and, therefore, give that injured worker greater support in that particular area?

Dr. Kryspin: I have not studied the proposal; only because I am acquainted with the whole problem, I—

Mrs. Marland: You have not studied the bill?

Dr. Kryspin: I was not able to study the proposal in its entirety. I am only discovering from my individual experience with each case and I am dealing with the injuries and with the disabilities as a whole—

Mrs. Marland: So, you are here this afternoon, speaking as someone who works with injured workers, but you are not knowledgeable of what the bill contains as it relates to those injured workers' rights under the bill?

Dr. Kryspin: I am only generally acquainted, but I am in the same situation as all physicians are. I know that we need to be much better educated about the problems that will arise for us in connection with disabled people.

My experience has been that the greatest difficulty is the present way physicians are educated. Physicians are not interested in the problems of the, say, legal aspects of their patients.

Mrs. Marland: No. Maybe I could ask the question a little differently. It is interesting to hear you say that this afternoon, because this morning we were talking about the fact that the injured worker might better be assessed by someone who has the professional knowledge to assess him clinically speaking, but who also knows him well enough as a patient that he could tie in the psychological factors or the emotional factors. For that injured worker whose family situation and whatever else contributes to our poor health or, conversely, to our good health, there might be a benefit to a

patient to be assessed by a physician and/or a specialist who knows something about his medical history, his clinical background and the other psychological factors that affect health.

From what you are saying, you are here speaking as a doctor, and I respect the fact that you are not here as a lawyer who has studied every section of the bill and knows the legal implications for injured workers. You are here strictly as a physician, and obviously, if you were in neurosurgery, a very well trained and experienced specialist, you are here in the other category, which means that the injured worker needs you. He also needs the lawyer, unfortunately, to get through the bureaucratic maze that presently exists, but when you say that you are here describing your concerns, you are looking at the patient, who you want to be a whole body and be protected in the future?

Dr. Kryspin: The worst thing that was happening in the past to injured workers was that they were never considered to be whole. They were always taken artificially—

Mrs. Marland: A hand --

Dr. Kryspin: Yes.

Mrs. Marland: Let's say I have injured my hand and now I cannot work. I am permanently disabled with that hand. The psychological effect that has on me as an injured worker can be a tremendous impediment to my being retrained. I may have the ability to be retrained to do something else, but psychologically I have not been given the tools to deal with it.

Dr. Kryspin: We must admit, of course, that the assessments as they are done now in the workers' compensation hospital are taking all of these aspects into consideration. There is a good psychological assessment, social assessment, orthopaedic assessment, psychiatric assessment. I must admit this has changed compared with the first cases that I saw, let's say 15 years ago. This has changed significantly.

Mrs. Marland: Do you think it is better now?

Dr. Kryspin: However, the biggest problems are those top-level consultants who are then overruling all those findings. We see it repeatedly. They are overruling the recommendations of family physicians, who know the patient best. They invariably overrule these decisions, but I have also seen them overruling their own hospital's decisions. Although the patient was assessed by a team of their specialists, ultimately there comes the senior medical or surgical consultant who overrules all these things and who decides, "You are still not disabled enough and you --

Mrs. Marland: Dr. Kryspin, I do not want to take up too much more time of my colleagues here, but the point is that top specialist who presently—do you have a problem, Mr. Dietsch?

Mr. Dietsch: Pardon me?

Mrs. Marland: Did you have a problem?

Mr. Dietsch: I am just wondering if you are going to allow anyone else any questions.

The Vice-Chairman: No, I was just—Mrs. Marland, I —

1730

Mrs. Marland: I just have a final question.

The Vice-Chairman: Okay. I think there are a couple who would like to ask more questions.

Mrs. Marland: That final specialist, Dr. Kryspin, who may have the ultimate decision on whether that injured worker has a permanent disability and therefore has a permanent disability pension, may in fact have just the file in front of him; all he has is the black and white on paper and they have nothing else in a tangible sense to know whether those diagnoses are real for that individual human being.

Dr. Kryspin: That is right.

Mr. Dietsch: I am curious about the comments you made with respect to vocational rehabilitation and the difficulty in the assessment of chronic pain. I understood you to say that the board as it exists has a number of specialists in a number of different areas; however, you feel the difficulty is not in the qualifications of the individuals on the board level but in the administration end of things, in being overruled by the professional positions put forward by the professions you outlined. Am I correct in understanding that?

Dr. Kryspin: Yes. It has been my—

The Vice-Chairman: Excuse me, Dr. Kryspin. Could you try to speak up a little? I think Hansard is having some difficulty picking up all of your comment.

Dr. Kryspin: The difficulty I have seen is that in rehabilitation and in vocational rehabilitation we are gradually shifting towards a new type of expert who has to be a generalist rather than a specialist, and only a generalist can take into consideration all aspects, legal, political, philosophical, psychological, physical and so on. We do not train generalists in this way, except on the level of general practitioners, and those general practitioners, who are the family physicians, are invariably overruled by the Workers' Compensation Board.

Mr. Dietsch: Many of the presentations made before us seem to zero in on specialists for different areas. For example, if it is a back injury then it would be a specialist in back medicine; I do not know what the medical term is. There seems to be a feeling throughout, if I correctly understand some of the presentations, which varies from your opinion. You are saying that a general practitioner should be more prevalent in terms of listening to that experience as opposed to a specialist in back injuries or leg injuries or whatever.

Dr. Kryspin: As the medical system works nowadays, the medical students and generalists are trained by specialists, and not only by specialists, I would say, like orthopaedic surgeons or psychiatrists, but also by subspecialists. Teaching hospitals are nowadays presenting a rather fragmented model of medicine and each family physician has to make his own synthesis of all that knowledge and has to do it for each of his patients individually; sometimes take more into consideration the psychological and

psychiatric aspect of depression and sometimes take more into consideration some physical aspect of the disability. Sometimes, as he goes with the patient over years, he has to change his emphasis.

But the specialist, who never knows the dynamics of the process of development of chronic pain, will make decisions by which he usually overrules that medical doctor who knows the patient best. That is the reason for the huge number of appeals and frustrations of wasted money, of wasted time and wasted energy. Very often these workers come with such a big file that they wonder if the criminals have such big files as they have. I think this is a very appropriate observation. I have heard it independently many times.

Mr. Chairman: If there are no other questions, Dr. Kryspin, thank you very much for your appearance.

We have one more submission scheduled for this afternoon that we thought was going to be here, the Energy and Chemical Workers Union, local 599, but they were scheduled for 6 p.m. As the streets are not very good out there, and it is conceivable that this person is late, I would not want to adjourn for the day until we see whether this person is going to attend.

Do members of the committee agree that we could adjourn until six, at which point we make a decision about whether to adjourn for the day? Would that be appropriate? We will adjourn until 6 p.m., at which point we will decide whether to wait for the last submission.

The committee recessed at 5:35 p.m.

1800

Mr. Chairman: The standing committee on resources development will come to order again. Mrs. Marland, if you are ready to commence, we shall do so.

We have with us Leo Muzyliwsky from the Energy and Chemical Workers Union. Welcome to the committee. We are sorry for the delay but we had some cancellations this afternoon. We are pleased that you are here and we would encourage you to go ahead and begin your presentation.

ENERGY AND CHEMICAL WORKERS UNION

Mr. Muzyliwsky: I am the president of Local 599. I represent workers from Texaco Canada Inc., Burmah-Castrol Canada Ltd., Lake Ontario Cement Ltd. and St. Clair Paint and Wallpaper Ltd. Our numbers are well over 100 working individuals. We are covered by a collective agreement and represented by unions representatives who can assist our members in situations that require assistance pertaining to workers' compensation.

I had another brief that was worked up by our national executive union and I submitted that brief also. This is just my own kind of recollection of what I perceive this Bill 162 to be. The government of Ontario has introduced a bill that will change the Workers' Compensation Act. Bill 162 is very important for everyone. I am greatly concerned that the government's proposals will severely affect injured workers. I stand here before you this evening to state my objections to its passage.

If Bill 162 is made law and I am injured at work, the Workers' Compensation Board will have only a very limited obligation to assist me in

returning to the workforce. This bill removes the right of injured workers to rehabilitation services and leaves the workers subject to the Workers' Compensation Board's discretion on whether rehabilitation is needed. This is a giant step backwards, because we all know that many people injured on the job have great difficulty in returning to work or in securing new employment. The less the government does to help these people continue to be productive members of our society, the more income maintenance benefit schemes will be needed to assist them.

The government says that Bill 162 requires employers to rehire workers injured on the job. In fact, this legislation has many exemptions and is very limited. Construction workers are not covered by Bill 162, nor are workplaces where there are fewer than 20 employees. Bill 162 removes the statutory rights to reinstatement from those who need it most. In my own estimation that is construction workers, who are among the most likely to benefit, and the unorganized, working for small employers, who are among the most likely to require some form of job protection in the event of serious injury.

It would only seem fitting, if the government is prepared to require employers to rehire workers who are injured on the job, that they should require all employers to do so. For the first time, workers will not be able to appeal this decision on rehiring. The conditions and restrictions placed upon the right to re-employment impact on those most in need of assistance. One would think that a compensation system which is based upon the actual wage-loss model would do everything possible to ensure that an injured worker returns to work if he or she is able. Basically, whose interest is served by blocking the path to a possible return to work?

Finally, the government is attempting to change the way monthly disability pensions are granted to injured workers. They are proposing what is called a dual award system. Rather than getting a lifelong pension for your lifelong disability, the Workers' Compensation Board will give you a lump sum settlement based on the loss of amenities one suffers. In other words, the Workers' Compensation Board will create a rating schedule setting out the degree of permanent impairment for specified types of impairment and that will determine the financial award.

Once again, you cannot appeal this award. You can receive a second award based on a loss of earnings which uses age as the main criterion to calculate the entitlement. It could be a lump sum or a monthly pension, but it is certainly far less than the pensions injured workers get now. In no uncertain terms, it signifies that the older you get, the less you get.

Mr. Chairman: Thank you very much for your presentation. I should point out that on page 2 of your presentation, about two inches down, you say construction workers are not covered by the bill. I think you mean the reinstatement part of the bill does not cover construction workers. It does not mean that the whole industry is exempt from the bill.

Are there any questions or comments from members of the committee on the presentation?

Mrs. Sullivan: Yes. It is very clear that you have put a lot of work into your presentation and that you have really looked at the bill. I am wondering if you could make some suggestions to us that are specific, relating to improvements.

Mr. Muzyliwsky: Basically, I just think a fair entitlement to an

injured person is required if you do get hurt at work. Unfortunate circumstances do prevail and you do get hurt at work and there are certain duties or functions that you cannot do right away. Your employer realizes that and you realize that, so you try to stay at home or you try to compensate yourself by getting yourself stronger in order to meet those criteria for that specific job.

For example, I work for an oil company and we do a lot of manual labour with our forklifts, but sometimes we have to get off our forklift and roll some drums. I can recall a situation when a fellow worker got hurt, but since we work in individual trucks, you cannot see what the other person is actually doing. Apparently this co-worker got hurt by rolling a drum in an improper way or it was a broken pallet that the drum was situated on. Our boss just did not believe that he got hurt rolling that drum, which is quite conceivable. Our boss has probably never rolled a drum before, because he came from a different department.

We all encounter back pain because we are rolling drums which weigh in excess of 500 or 600 pounds. Sometimes the Workers' Compensation Board does not realize there are certain jobs where people do exert a lot of physical effort in order to perform their job and they need that time off work to fully compensate their bodies and to get themselves back in the proper shape.

Mrs. Sullivan: One of the things we have heard from both employers and workers is that medical rehabilitation, which is basically what you have been just talking about, is very important, but as well, vocational rehabilitation is key in the system. Would you like to talk about that a bit?

Mr. Muzyliwsky: The only thing I can really revert back to is our own situation where we work. We had an opportunity of using computers after we perform our job function. We loaded our trucks and we had to punch everything into the computer. When a certain individual got hurt on the job, he was the one who was working in the office, he was punching in all our computer work, so it actually took away some of that vocational stuff from us, who are the healthy workers, and placed it upon the injured worker, whoever had something like a broken leg.

I came to work one time with a broken leg, so I worked the computer and was pretty knowledgeable, but that was a couple of years ago and I have probably forgotten how to utilize that computer now. I do have one at home which kind of sits there by itself without my actually using it.

Vocationally, I think everyone should have a right to—

Mrs. Sullivan: You must have some games that you play on it.

Mr. Muzyliwsky: I try to track the football spreads, actually. It is the only game in town.

Mr. Dietsch: The truth is out.

Mr. Muzyliwsky: Yes, the truth is out. I never lie. That is the only reason I bought it.

Vocationally, I would just say that we all like to excel in our jobs. We like to have a little bit more job satisfaction. We do not always want to do just one specific type of job, we want to advance ourselves both physically and mentally in our jobs, because I believe the worker is the one who makes

the money for the company. The company may set the policies, but if it were not for the individual working, the company cannot gain a profit.

Unfortunately, in our situation right now, Texaco Canada has been sold and that is another situation at hand. I am not here to discuss that, but I wish the company would have more input from us, asking what we would suggest to help the company in certain situations. We do have other policies.

We have a Better Way program in which an individual from our company can suggest an idea. On that basis, the company looks at the feasibility for job performance and how it is placed in the workforce. The individual who puts in this policy or suggestion, if it is a very worthwhile one, is compensated either financially—before they were giving out Blue Jay tickets—or through some kind of incentive to make an employee more reliable and more affordable for the company; that is of benefit for everyone, even for himself.

I think a lot of workers do not feel the need to perform all the time for the company, because the company is basically just for itself. I guess I have to get back to the basics. If it were not for the actual working people here in Ontario, a lot of these companies would not be in existence.

Mr. Chairman: Any other questions? Thank you very much for your presentation. We appreciate it.

That is the final presentation of the day. We shall commence tomorrow morning at 9 a.m.

Mr. Dietsch: Can't it be earlier?

Mr. Chairman: You were here this morning at nine and I know you will be here tomorrow morning at nine. We are adjourned until tomorrow morning at 9 a.m.

The committee adjourned at 6:12 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Canadian Paperworkers Union, Locals 212 and 338:

Empey, Fred, Chairman, Workers' Compensation Committee

From Kensington-Bellwoods Community Legal Services:

McKinnon, John B.

Dee, Garth, Workers' Health and Safety Legal Clinic

From the Canadian Union of Public Employees, Ontario Division:

Stokes, Michael, President

Haffenden, Carol, President, Local 1750

White, Jack, National Representative, Ontario Regional Office

From Stringer, Brisbin, Humphrey:

Salisbury, Robert E., Barrister and Solicitor

From the Labour Council of Metropolitan Toronto and York Region:

Swarbrick, Anne, Executive Assistant

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, March 21, 1989

The committee met at 9:20 a.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order as we continue our examination of Bill 162, An Act to amend the Workers' Compensation Act. These are the public hearings, part of the process at the completion of which we will be doing clause-by-clause and considering any amendments to the bill.

Before we start, is Roland Mainville in the room? No?

We have with us this morning Fred Empey, who I understand has come some distance to be here with us. Mr. Empey is from the Canadian Paperworkers Union, Local 212. Welcome to the committee.

Mr. Empey: My apologies for being late, but I can assure you I left at two o'clock to get here on time.

Mr. Chairman: This was from Cornwall?

Mr. Empey: Right. There was a blizzard until after Kingston, and then I hit your traffic out here. That is something else.

Mr. Chairman: You are better off in the blizzard than in traffic, I assume.

Mr. Empey: I turned off at Whitby and took Highway 2. That was faster.

CANADIAN PAPERWORKERS UNION, LOCALS 212 AND 338

Mr. Empey: I think you have all seen me before. I was before you in Ottawa on March 9, representing the Cornwall and District Labour Council. The circumstance I am going to be talking to you about today is a large industrial circumstance with two large local unions comprising 1,300 to 1,400 members. We have a multitude of problems besides the ones that were outlined to you at the last hearing in Ottawa.

As an introduction, locals 212 and 338 of the Canadian Paperworkers Union represent 1,300 members, part of a completely integrated fine grade paper operation of Domtar Fine Papers Ltd., Cornwall, Ontario. With the exception of harvesting raw materials, the jurisdiction of the two locals covers all aspects of the paper-making process. For the safety and welfare of the mill employees and the economy of the operation of the equipment and processes, with all the physical and technical aspects of the work involved

considered, a joint agreement is in place to deal with all employee circumstances within "the sphere of company affairs."

Workers do not intentionally injure themselves, nor do they go out of their way to absorb the massive knowledge they would require to be totally aware of their rights and the benefit entitlements legislated for their protection and security throughout the advancement of the Workers' Compensation Act. Complete faith and trust in the employer become essential to ensure all protections and securities are forthcoming from the Workers' Compensation Board. Their job security and rights to negotiated benefits are contained in the joint labour agreement and in the past practices established.

I have also included in this presentation a complaint that was submitted to the Ottawa regional office of the Workers' Compensation Board in July 1986 regarding the calculation of average gross weekly earnings which, if the minister's proposals go through, will become the basis for any benefits that are paid, including weekly benefits.

These pages were supposed to be numbered. I am terribly sorry. I did not have time to do it and I guess it was not done. Let me locate it for you. The second yellow or buff page you have—there is correspondence from the Canadian Paperworkers Union to Robert Earle, who is the health and safety supervisor at Domtar Fine Papers. Oh, my God. I hope yours are not the same as mine, because mine are missing from here. I will go from the master. There should be a copy of a letter that was sent to the Workers' Compensation Board in Ottawa regarding the calculation of earnings dated July 3, 1987. Did you find it?

Mr. Chairman: Yes.

Mr. Empey: You will find that quite interesting because the letter and the complaint were taken to the company during negotiations that were on during that year. It refused on five separate occasions to even discuss it. It said it had the total right to determine what was going to happen in workers' compensation. Failing that, we immediately put a complaint in to the Workers' Compensation Board and I can assure you the position taken by the Workers' Compensation Board has been exactly the company's position. We have let it go this far and we are very happy these hearings are going on. If you are interested, check with the Workers' Compensation Board in Ottawa. It will tell you it has done exactly nothing.

What we have been doing is correcting these claims on an ongoing basis. If the basis for any future benefits is going to be the gross average weekly earnings of a worker, then something had better be done to get that corrected.

Nobody wants the hassle of an injury or of dealing with the Workers' Compensation Board. In our mill, it could mean your job security. For the last 20 years we have been struggling to correct the injustices rendered by the Workers' Compensation Board and those injustices rendered by our employer in an effort to protect a now even more critical accident frequency experience record and their cost experience statistics.

Far too often in our mill, the obvious problem of delay in receiving financial assistance results when a claim for workers' compensation is required. Even when the claim proceeds without obvious problems, it is not uncommon that the injured member's full benefits are not received. Unless the injured member seeks help from his union, that information does not become available to the union until some opinion of a board representative creates a problem, or even worse, at the time our employer has decided to implement

termination on that employee. Our employer can usually cite Workers' Compensation Board support for the decision to terminate.

The minister's proposed changes do nothing to eliminate or improve these circumstances. In fact, they provide our employer more support for its decisions regarding troublesome injured employees.

Amendments to the Workers' Compensation Act, implemented amazingly on April 1, 1985, have made it even more convenient for simple reporting circumstances such as rates of pay, hours of work and all other income aspects of an employee's weekly earnings to become confused. The average weekly earnings dictate the level of temporary total disability benefits. Temporary total disability benefits are the basis for all calculations outlined in the minister's proposed amendments and are currently being used as the basis for permanent disability pension awards.

Over many years, all employers have made the plight of injured members, during initial attempts to gain the legislated benefits of the Workers' Compensation Act and during recovery, a hard-to-detect travesty. Their dealings with the Workers' Compensation Board continually become confused. Support for their travesties can always be directed back to the opinions and decisions of Workers' Compensation Board representatives, who base their opinions and decisions, in part, on information and objections supplied by the confused employer. If the employer's co-operative attitude when dealing with board representatives were a fact and sincere, all reporting to the Workers' Compensation Board could be appropriately deemed to be correct.

The minister's proposals will justify and increase employers' attempts to reduce their accident and cost frequencies.

There are three key factors the minister identified in his proposals: a need to increase the earnings ceiling, the fact that serious injury also causes personal and social injury to the injured worker and the injured worker's family, and that besides compliance with provincial health and safety regulations, an employer has a responsibility to his injured workers.

Unfortunately, the minister's proposals will contribute further to the bad circumstances experienced by our injured members and further the emotional disaster and psychological trauma which is always inevitable.

0930

For an understanding of our objections to the minister's proposed change, it is important that the reasons be understood. I would like to give you an example of what the current opinions related to the Workers' Compensation Act do for our injured members and what opinions based on the changes will do and are doing.

It should be made quite clear that the proposed changes were implemented January 1, 1989, and were on trial during 1988, before their implementation.

History of a papermaker: A young 19-year-old graduates from high school, chooses not to further his education and begins to look for work that will provide a good income, security and a chance for advancement. There are few employers who can provide those circumstances in eastern Ontario. Competition for the few that do become available is considerable.

It is important to note that if the unemployment statistics for Ottawa

were taken out of the regional unemployment average, the eastern Ontario area of Stormont, Dundas and Glengarry would rise from the six per cent listed to 10.3 per cent. I would like you to keep that in mind when we discuss rehabilitation and workplace reintegration.

The paper mill in Cornwall is probably the optimum of what young workers are striving to achieve. The union has been able to negotiate a good starting wage and evaluated job classification rates. There are a variety of progression jobs where the wages increase with responsibility as a worker progresses up the line of progression, based on seniority, knowledge and capabilities. There is a favourable negotiated welfare and pension program in place and there is the option of applying for a number of trades.

Most areas of the mill are exposed to heat, noise, dust, chemicals, high-speed machinery, a rotating 12-hour shift working schedule, continually moving transporting equipment and all of the dangers associated with an industrial, competitive work environment.

The starting pay is more than double that which can be earned at the work available throughout all communities of eastern Ontario. Workers leave other employment to get hired at Domtar, the paper mill.

When new employees are successful in completing the 90-day probationary period and become names and numbers on an active payroll list, they are accepted into the union and become spare crew employees in a relief capacity to be scheduled, as required, into whatever department, department work area or work circumstances are available within the mill's jurisdiction. They receive the rate of pay for whatever job they are replacing.

Basically, all work is scheduled on a 12-hour rotating shift cycle. With the exception of the 200 trades classifications, who are regularly scheduled for overtime, there are few employees who would work only 40 hours per week. Even fewer would be paid the base rate of, now, \$13.43 per hour. The average hourly rate earned is estimated at \$14.90. The average weekly pay hours are 45.

The least a spare crew, relief employee could earn, on average, when following a 12-hour or eight-hour rotating cycle and receiving only the base rate pay of \$13.43 per hour, would be \$616.95 per week. The average employee, earning \$14.90 per hour and following the same shift circumstances, would gross \$683.10.

One could assume that any injured worker would receive maximum workers' compensation benefits under those pay circumstances. That is not so. It is important to remember that all calculations for disability benefits are based on the initial temporary total disability weekly benefits determination.

Example 1: Situation: A 25-year-old mill employee seriously strains his lower back at 9 a.m. on a Thursday morning, the second of two 12-hour day shifts he was working in the shift cycle that week. He was working alone when the straps securing a 180-pound shaft to an electric hoist slipped and he attempted to stop the slide.

He has been employed for six years and has progressed to a job-evaluated classification rate of \$14.68, \$1.25 above the base rate of \$13.43, and receives all premiums available to a tour worker as well as a production bonus. The worker is the third person of a four-person line of progression.

The injured worker is married with one child but claims single for

income tax purposes. His wife is at home caring for the child. They have just bought the home. He has never been sick or lost any time from work in the past. He likes his work and knows nothing about workers' compensation.

The injured worker reports to the company first aid, as required, and is sent to the emergency department of the local hospital. A WCB treatment memorandum is sent along with the company's form, "To Attending Doctor," which you will find on the last page in the documents I supplied to you.

The injured worker is diagnosed as suffering from a severely strained lower back. Under the company's form, "For Doctor's Use Only," question 3 indicates: "3. It is our practice to provide light duty work. Please check off restrictions if applicable."

You have to remember that Domtar Fine Papers and the paper mill is a heavy industrial circumstance and very physical.

The attending physician has no idea of the work at Domtar or its availability to injured workers. To save the injured worker the inevitable heartache of dealing with the Workers' Compensation Board, the company's form is completed as follows: "No lifting over 20 pounds. No bending. Limited walking. No stationary standing." And he has to be allowed to rest whenever he gets tired. It will be for a duration of six to eight weeks, but he says he does not have to remain off work and the diagnosis is acute lower back strain.

The company's policy is not consistent. It is applied restrictively, depending on which department and what actual work is available for disabled workers. There will be no light duty or modified work for this injured worker for that length of time.

With good intentions, the emergency casualty officer had just given the injured worker a free ticket for a long, long trip. There were no witnesses to the accident. The shift was a nonpremium shift. Bonus is not calculated until the end of the week, and the emergency casualty officer indicated the worker could perform light or modified work.

Therefore, the employer's report of accidental injury or industrial disease is completed based on the information available.

I have also supplied one of those, which should be the page just before that. I doubt very much that it is.

Anyway, questions 1, 2, 3, 5, 6 and 7 are answered no and questions 4 and 8, which are the key questions on that page, are answered yes.

To the employer, question 4 means that there were no witnesses to the accident so they cannot support the circumstance. Question 8 means that the doctor said he could return to light or modified work, but we do not have any.

The earnings information: His hourly rate is \$14.68 and he would get paid \$176.16 for a 12-hour shift. There are no shift premiums paid on the day shift, so none is reported, and the bonus cannot be calculated until the end of the week.

He is listed as single in the company files for income tax purposes, so his net claim code is 01. His shift that week was 12 hours on Sunday, for which he got paid 18 hours, but it is identified as a 12-hour shift. He worked Wednesday 12 hours and he worked three hours on Thursday until he was hurt,

and the company is responsible for the rest of those, so he worked 36 hours in that week, and that is what is reported.

In fact, this worker follows a seven-day, 12-hour rotating two-shift cycle over 28 days, four weeks, in which he works 168 hours, half on the night shift, for which he receives a premium of 60 cents per hour. He would work two 12-hour Sunday shifts, for which he would receive a premium of six hours' pay at classified rate for both shifts, increasing his cycle pay hours to 180, or an average of 45 hours' pay per week, not 36. His average production bonus per hour has a value of \$1.40. The injured worker's gross average income would actually be—I have given you a calculation—\$732. That would be his gross average income.

What has been reported? Simply \$528.48. You have to remember that all further future calculations that are made in regard to his claim are based on the temporary total disability amount that is calculated.

He would receive \$350.96 for the wages reported when in fact he should have received \$461.14 per week, a loss of \$110.18 just in the temporary total disability benefits alone. If he is going to be out eight weeks, you are looking at \$1,000 he has lost in entitlements which are due to him.

0940

Subsection 45a(1), the 12-month limit to full benefits: If the injury had not been so severe and the recovery time so extended, it is possible that light duty work would have been provided to escape a lost-time accident experience increase. The loss would have been less, but even that loss in average weekly gross income would not have been reported by the employer. The physical nature of the regular work available in the paper mill is such that a worker with a sore back would not be able to carry out the duties as required.

When an injured worker has been away from his regular work for an extended period of time, the employer will not allow the worker back to work on light or modified work or his own regular work unless he is healed and ready to work full-time. Recovery periods for serious injury in our mill could be as long as two to three years. It takes time to heal properly. I will say it again: Recovery periods for serious injury in our mill could be as long as two to three years and it takes time to heal properly.

The injured employee will, however, return to active full-time employment and preferably to the work and progression line he has chosen whenever possible. When it has been determined that it is not possible, then all Workers' Compensation Board rehabilitation benefits are due and the union will help to see that they are implemented.

Section 5a, maintenance of benefits: In our mill, the injured worker's full medical benefits are protected and maintained by the employer, as are the rights to the 40 hours' pay for each week of the vacation entitlement and all stationary and floating holidays, while experiencing lost time as a result of an occupational injury for which workers' compensation is paid.

We obviously agree that an injured worker's benefits should be maintained. However, the one-year limitation proposed by the minister will reduce our employer's current responsibility in the event of an extended recovery period. Our employer really does not require any help to take advantages away from injured workers. The minister should ensure his proposed

amendments do not take away from the injured worker's rights where they have already been established.

Section 41, maximum loss of earnings: The minister is proposing to revise the earnings ceiling from \$35,100 to \$40,000 and, in a second move, to \$44,000. The trades people and those other employees in our mill who have progressed through seniority and ability to a more favourable level in their chosen work area also get injured.

While we applaud the minister's recognition that the earnings ceiling must be raised, we suggest to him that it would not be a difficult accounting effort to establish the average weekly and, in turn, yearly income of each job classification in our mill and collect the premiums due, as is currently the case. We suggest to the minister that that initiative would not only solve the inequity in compensation for actual loss of wages but the reporting of wages by the employer would have to be less confused for benefits and for WCB premium purposes.

Subsection 45a(3), suitable and available employment: The deeming aspects of the Workers' Compensation Act, which seem to continually be increasing and including more and more bureaucrats who have never, ever seen the injured worker or have any idea of his work or physical circumstances, other than the paper facts which may or may not be available, offer phantom jobs and phantom presumptions and have become the basis for far too many life-shattering board opinions. All variables of the injured workers' circumstances must be given full consideration when any deeming or board opinion is implemented. That just is not done now, nor have any amendments been proposed to ensure it will take place.

The workplace reintegration plan: I would like to tell you before I get into this that we are not completely opposed to the workplace reintegration plan. I think it needs some work, but we are not completely opposed—if it were not for the destructive nature of the workplace reintegration plan which has been in effect even before January 1, 1989, when the Workers' Compensation Board started to gear up for the minister's Bill 162, proposed amendments to the Workers' Compensation Act, 1988.

It is sad to be able to say that far too many claims for workers' compensation benefit entitlements are not even finished being processed within 45 days. I have included a copy of that chart. There should be a number on the page, but, if there is not, if you flip through it, you will probably find a chart that, you will notice, is out of the minister's material that he submitted, probably three or four pages from the back. The initial time period is 45 days before they have an adjudicator or somebody else calls an injured worker.

Telephone contact made by the adjudicator or other WCB junior staff to an injured worker who is trying to recover with the intent of returning to his regular work can start the opinion ball rolling and further psychological trauma to the worker. The end result of the opinionated involvement of the Workers' Compensation Board bureaucrats speeds up the process of ruining the lives of injured workers and their families, and I fully believe that.

If an injured worker insists that his attending physician or specialist does not want him doing any kind of work while he is recovering, as indicated on the doctor's progress report, there is no question that he is being

unco-operative, based solely on opinions of the board, including a regional medical adviser who is paid to assume.

Forget the fact that there is no work in the community for the injured worker to secure, even if he were deemed fit for some kind of employment, as assumed by the regional medical adviser. Forget the fact that as soon as the injured worker accepts other employment, the accident employer has every right to terminate and remove the injured worker from other cost responsibilities.

Forget the fact that there is no work available with the accident employer, even if the injured worker were fit for some kind of employment, as assumed by the regional medical adviser. Forget the fact that the injured worker's regular work will be available to him when he has recovered.

Reduce the total temporary benefits to 50 per cent, with the threat of further action in six months if the injured worker's attitude does not improve. Forget the fact that all appeal systems in place to correct injustices are backlogged nine months.

In a brief presented November 17, 1986, to the Ministry of Labour's Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board at the Chateau Laurier Hotel, several points were made and supported. That particular document was 98 pages long, and, because they only gave me a day to present it, I cut it down to 68 pages. I can assure you that none of it was looked at through that task force, and I am from eastern Ontario. That is the document that was handed in there and you have got two of them from me so far here.

Regarding vocational rehabilitation:

1. Vocational rehabilitation was basically nonexistent in eastern Ontario.

2. There were insufficient qualified staff to administer any rehabilitation advantages that were supposed to be available.

3. The deeming aspects of the act's "in the opinion of the board" were so broad and demanding on a multitude of board opinions that, unless everyone who had to be involved were sincerely interested in the injured worker's position: in the injured worker's actual, current level of disability; in the relationship to the nature of the employment; in the nature of the physical requirements of work available with the accident employer; in the track record of the accident employer, and whether the the injured worker could return to similar employment with the accident employer when recovered.

4. Access to the workers' compensation rehabilitation facilities in Downsview or Ottawa was slim.

5. Value of the service to injured workers who were able to get there was not very good.

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Return of injured members to employment, Domtar Fine Papers, Cornwall, Ontario: The right of an injured worker to return to the accident employer and to the work he was performing at the time of the injury should be consistent, giving full consideration to the nature of the working conditions and to the severity of the injury sustained. It has been the policy of our local union to

support any injured member in his attempts to return to active employment as soon as he is physically and mentally capable of doing so.

Every circumstance is different, as are the work requirements throughout the mill. Our employer's attitude towards providing work for injured workers fluctuates with his understanding of his workers' compensation costs and accident experiences.

I would like to expand on that. I have a lad who has been in the mill now for 11 years. He got hurt working as a back-ender on one of the high-speed paper machines. He had his hand nearly torn off. It was because a piece of equipment was broken for several shifts and had not been fixed. He has been out now for well over a year. He is still having surgery on his hand.

He wants to go back to his job. He makes \$17.83 an hour. He has bought a home. He has a new car and he is living off the WCB weekly disability benefits now, which had to be looked at because they were not correct. The company has had a chat with him about taking away his benefits and terminating him. They have done that once in 1987 and they have done it five times since. The union has not been successful in doing anything about it, even though we do have sections of our contract that are quite clear. There will be a push coming from eastern Ontario very quickly against Domtar, but those are the circumstances right now.

This lad was recovering quite nicely. He was looking forward to being able to return to his work. He has been stuck in the rehabilitation hospital in Toronto, which he thinks is a marvellous place, and I am not kidding.

Mr. Chairman: I am going to have to interrupt you. We do have some time constrictions, and you have used up your half hour. I know that you have driven from Cornwall this morning, so we want to take that into consideration. If you would complete your remarks, then we could have a couple of questions, considering the distance that you have come.

Mr. Empey: I appreciate that. Anyway, I would like to say that there are problems there. Both Local 212 and Local 338 of the Canadian Paperworkers Union, as critical as we feel we must be under the circumstances, cannot allow anyone to think that we believe every bureaucrat and every action taken by the Workers' Compensation Board of Ontario is intended to be destructive. Over the 20 years of involvement, many board employees have proved themselves worthy of their intended role. The motto of the WCB, "Justice speedily and humanely rendered," could more adequately be served, however, if the intended improvements and necessary amendments were discussed in depth with the intended recipients before being proposed. The administration of the act must be a priority.

I thank you very much for allowing me to come to talk to you today, and I am prepared to answer any questions.

Mr. Wildman: I just have one question. Obviously, your local union's problem with the Workers' Compensation Board re calculation of earnings has been one of long standing. You have indicated that you have contacted people on the board and you have had ongoing discussion. Have you gone the political route as well? Have you contacted your local MPP and what assistance has he been able to render you?

Mr. Empey: Our local, as well as the other major local at our mill, has been following the procedures outlined by the Ontario Federation of

Labour, which is our spokesman in the province, and we have contacted our MPP. It is amazing that he is right out of our mill. As a matter of fact, he was supported by a good many of the union people who are in that mill. That is why he is our MPP now.

Unfortunately, he is not too aware of the Workers' Compensation Act or the situation that is taking place right now. He has indicated to us that he is willing to participate with us and speak on our behalf wherever he can. Right now, we have to accept that. I think your question was whether we had taken the political route.

Mr. Wildman: Are you aware of whether he has talked to the chairman of the board and also to the minister regarding this problem?

Mr. Empey: No. He has not.

Mrs. Stoner: I was particularly interested in your comments regarding vocational rehabilitation. To start with, I would like to thank you for your presentation and particularly for giving us the perspective of eastern Ontario.

I was wondering if you were aware that the vocational rehabilitation dollars have been augmented by \$26 million to bring them up to \$40 million, and also that there are integrated service units that are going to be placed throughout the province, I assume in response not only to you in eastern Ontario but to other people who are concerned about access and the fact of the provision of the services on a timely basis.

Mr. Empey: Yes, I am aware of it. I think the money will be directed to the Ottawa regional office and the rehabilitation services there are in Ottawa right now. The feedback from that service is actually becoming much better too. We are aware of the money that is being directed to the program. Whether it is going to be of any assistance to the people in my area of eastern Ontario is another thing.

Mrs. Stoner: We are hoping to see it spread beyond the centres of Ottawa and Toronto so that your needs and other areas that feel they are not well serviced could be serviced.

Mr. Empey: In the area of rehabilitation, I think that rehabilitating the doctors because of their attitudes would be a good place to put some bucks to try to educate them so that they know what the WCB is about and what kind of troubles they can get into if they do not—

Mrs. Stoner: Would you and your union and the labour organizations that you are affiliated with be willing to participate in putting names into the medical roster that is in addition to the WCB doctors? Would that maybe help?

Mr. Empey: You bet.

Mrs. Stoner: Okay, good. Thank you for coming all this way.

Mr. Chairman: Mr. Carrothers, did you have a final question?

Mr. Carrothers: Just one short one. I appreciate the detail on how in a plant such as yours that has performance incentives the system can work

to the disadvantage of people who get injured. I just want to make sure I understood what your suggestion was, or if I have it correctly.

Are you suggesting that the WCB benefits should perhaps be paid on the average wage that each job classification earns across the plant rather than trying to determine what the individual worker's average wage was as a way to get around this problem?

Mr. Empey: No, I am not suggesting that at all. We have a job evaluation program in place in the mill. There are 36 job classifications and only 21 of them are being used. It would be very easy to determine. If a worker were at a certain classification, a tool worker, then it would not be too difficult to multiply that by 45 and add \$12.60, which is a shift premium. If he has a bonus, tack the bonus on to it too. That is the basis of the calculation for determining gross average weekly earnings.

Mr. Carrothers: If I understood it, you were saying about the present system which takes whatever their reported earnings are, that if they get injured in the middle of the week, they lose that performance bonus. All of a sudden they find they are getting a benefit based on a figure that was much less than what they were actually taking home.

What I think I hear you saying is that a benefit should be paid, or you are suggesting that a way to get around that would be to sort of construct what each job classification might be earning in the way of performance bonuses and so on and then pay that to someone, rather than trying to calculate or work from the individual worker's records. Or am I completely misunderstanding what you are saying?

Mr. Empey: No, you have it, but the workers' compensation policies and procedures do not take overtime into consideration. Overtime is not part of the calculation. That is a bonus for the employee and for the employer in that he is getting that person to work. But that is not taken into consideration. Whatever their normal weekly earnings would be—actually I even feel that the four per cent or 12 per cent vacation entitlement that they earn every week should be calculated into it too.

In our mill, with 21 classifications, it would be simple to say, "This rate at 40 hours a week, this rate at 45 hours a week, this rate at 45 hours a week plus the shift differential and if there is a bonus, just tack it on." The bonus is relatively nothing compared to—once you get to the 45 hours a week and the shift differentials, everybody is over the maximum rate anyway, until, of course, the minister raises the ceiling on the earnings. Then I think there might be another problem there.

That is a good point you made there. I appreciate that.

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Mr. Chairman: I am sure I express the appreciation of the committee in saying thank you for the special effort you have made to get here today to give us your views on Bill 162. Thank you very much.

Mr. Empey: My local union thanks you.

Mr. Chairman: I hope you are able to have some rest before you head back to Cornwall and do not immediately jump into your car and head east.

Mr. Empey: I have a meeting at two o'clock.

Mr. Chairman: All right. Not in Cornwall, I hope.

Mrs. Stoner: Drive carefully.

Mr. Chairman: Our next presentation is from the Kensington-Bellwoods Community Legal Services. I see Garth Dee here and Mr. McKinnon. Welcome to the committee, gentlemen. Whenever you are ready to proceed, please do so.

KENSINGTON-BELLWOODS COMMUNITY LEGAL SERVICES

Mr. McKinnon: Thank you, Mr. Chairman. As mentioned, I am John McKinnon. I am a lawyer. I am here on behalf of the Kensington-Bellwoods Community Legal Services. Actually, I am in a unique position: I am changing jobs as of this week and working for another community legal clinic, so I will be back again on Thursday with another presentation, but for the time being I am here on behalf of the Kensington-Bellwoods clinic.

It is one of 66, I believe, community legal clinics in the province. It deals with a variety of issues; workers' compensation is one of the main issues we deal with at Kensington-Bellwoods Community Legal Services. We provide the case workers and the administrative and legal support for the legal clinic run by law students of the Union of Injured Workers, so at any given time we have approximately, say, 400 open files dealing with problems in workers' compensation.

As well, I am here as a member of the Ontario Legal Clinics Workers' Compensation Network, which is an association of community legal clinics that do a great deal of workers' compensation work. Various members of the network have appeared before you in Sudbury and will be appearing before you, I think, in Thunder Bay and in London, not making necessarily the same points we are making, but it is all part of a brief we intend to put together for you.

With me today, as mentioned, is Garth Dee. Garth is a lawyer. He was formerly a member of the office of the tribunal counsel at the Workers' Compensation Appeals Tribunal. He is currently a lawyer with the Workers' Health and Safety Legal Clinic, another one of the 66 community legal clinics in the province. Garth is perhaps more well known as one of the co-authors of the leading legal textbook on workers' compensation cases, Workers' Compensation in Ontario, which is a law book that was published by Butterworths in 1987, I think.

We are going to limit the topic of our presentation today. I would like to thank you for giving us the opportunity to speak to you. I understand that special arrangements were made to try and bring in some of the people who had previously been left off the list and we are grateful for that opportunity.

At the same time, we have to express our concern that there are, I understand, literally hundreds of people who have requested an opportunity to speak with you and who have not had the opportunity to do so. I say that not just because there are people in those numbers whose views I respect and whose views I wish you could hear, but also for more fundamental purposes: If you are going to try to set workers' compensation straight, it is absolutely important that you hear from the people who experience the problems and from the people who try to solve those problems. That is really one of the key points of the presentation we want to make today.

Historically, criticisms from the workers' compensation community about workers' compensation have been centred on the administration of the act, the quality of decision-making and the credibility the Workers' Compensation Board has in the day-to-day decision-making.

The proposal you see before you in the form of Bill 162 has its origins in an analysis developed by Professor Paul Weiler, beginning with his 1980 report on Reshaping Workers' Compensation for Ontario. Many of the fundamental principles of Bill 162 stem from his early proposals and his later developments of them. It is interesting to note that at the time Professor Weiler began his analysis he refused to hold public hearings and to listen to the people who have the problems and the people who spend their lives trying to solve those problems.

As well as, I believe, dismissing some of the criticisms as carping and complaining, he said that one of the problems is that critics of the current system tend to impute the ills of the system to the people who are involved in the decision-making processes at the board and so public hearings, he felt, would only fuel those emotions and waste the time of his review.

That approach to solving workers' compensation problems, in my submission, has tainted the analysis that he developed and the principles that the bill is based on. There is a particularly insightful expression of his position in his 1980 report on Reshaping Workers' Compensation for Ontario. He says that: "The area upon which I have so far dwelled in this report--the structure of compensation benefits--is the heart and substance of the workers' compensation program. These are the issues emphasized in scholarly studies, government inquiries, and law reform agendas--and rightly so. Strangely, perhaps, they were not the primary focus of the submissions which I received from injured workers and their representatives; rather, these groups were most aggrieved by the administration of workers' compensation in Ontario."

It is the administration that we want to direct our submissions to today. In our submissions, it is not strange at all that their criticisms were directed towards the administration. Take the example of doctors. Doctors are highly trained, highly educated people, but they start their approach by asking the patient: "Where does it hurt? What's the problem?" By the same token, we think it is important that you look at workers' compensation from that perspective.

Bill 162 is not presented as some kind of an historical compromise between conflicting interests of employers and injured workers and trade unions, etc. It is presented as a bill that is for injured workers: designed to present fair compensation for injured workers. So we think it is vital that you hear out those injured workers and the people who spend their lives trying to solve those problems, and only after that begin to structure your thinking about workers' compensation.

At this point, I am going to cut off my introduction to the topic and I will turn it over to Garth Dee to deal with the more particular aspects of our submission.

Mr. Dee: The people on this committee are very aware of the level of complaints there are against the workings of the Workers' Compensation Board and against the workings of the workers' compensation system in Ontario. I disagreed with Professor Weiler's analysis that concerns over administration are strange or misdirected.

No matter how generous or punitive the system of benefits is to deal with workers' compensation in Ontario, it is our belief that the methods of administration of the act that are used by the Workers' Compensation Board, and the structures that exist to decide workers' compensation entitlement, are the primary reason you are seeing many tens of thousands of people upset with the workings of the Workers' Compensation Board. Professor Weiler wrote off those concerns as strange. We do not think they are strange; we think they are primary, and they can go a lot further to explain the level of dissatisfaction than perhaps the benefit levels themselves.

The number one problem in the administration of workers' compensation in this province is that the government, as embodied in the Workers' Compensation Board, has too much unchecked power over the lives of the workers who are dependent on the board for support. The message that we want to get across today is that it is not a hopeless situation; it does not need to exist; and that the system will work better not by increasing the amount of discretion and power that we give to the compensation board, but by reducing the amount of arbitrary and discretionary power that is provided to the compensation board.

We see this reduction in board powers being usefully attained in four separate manners. The first is that the scope of discretionary authority that is granted to the board by the legislation needs to be reduced wherever possible.

Second: Where the board is granted discretionary authority—and it must have some discretionary authority—the board's exercise of discretion needs to be structured in a way that encourages consistency, accountability and openness, and the primary method of doing this is by the formulation of policy.

Third, the board must be made accountable to an external authority, to ensure that its actions comply with the law.

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A part of that third point is to make sure that the relationship that exists between the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal is made more clear. Right now we have a system which is, first, objectionable because it makes sure the board is not answerable; second, it is also an unworkable system, because the power relationships between the appeals tribunal and the WCB are so uncertain as to cause a massive confusion and uncertainty in the workers' compensation system.

Fourth, there needs to be a reduction in the ability of the WCB to influence governmental legislative reform. We think there are changes that could be made there.

Those are the four main ways we see that the board's powers could and should be reduced. Before getting into our proposals on how we think those goals can be achieved, I would like to spend some time outlining the scope of the discretionary authority that is granted to the board, in other words, where discretion exists in the system right now that could be reduced; the problems that the existence of this discretion create; and finally, the problems resulting from the lack of clarity in the relationship between the appeals tribunal and the WCB.

On that last point, John will have some comments about the group of people who are in front of the compensation board on the chronic pain cases

that are currently subject to section 86n review.

To appreciate the problem of discretion, you only need to look at the Workers' Compensation Act; you do not only need to take a look at that, but that is a good place to start. There are many extremely vague or discretionary provisions within the current Workers' Compensation Act. I would point out that the proposed amendments go further in increasing the number of extremely vague and discretionary provisions we give or the government is contemplating giving to the WCB. We view this as a step in the wrong direction.

Examples of permissive legislative provisions creating discretion are scattered throughout the act. I will give some examples; this is by no means exhaustive. Subsection 43(2), dealing with workers' earnings basis, states, "...regard may be had..." Subsection 45(5), dealing with pension supplements, says the board may supplement. Subsection 52(3), dealing with health care, states, "The board may pay..." Section 54, dealing with rehabilitation, states, "...the board may take such measures..." It is not an exhaustive list, but those provisions are very central to the operation of the Workers' Compensation Act.

In addition to directly providing the board with discretion, many of the pivotal concepts in the Workers' Compensation Act are extremely vague and are open to interpretation and that interpretation is left to the compensation board. Examples of vagueness go to the pivotal concepts. Again, I will run through a list of some of those.

Subsection 3(1) provides that a worker is entitled to benefits "arising out of and in the course of employment." Volumes have been written on that subject alone. Clause 40(2)(b) provides for the reduction of temporary benefits depending on the availability of suitable employment, or where a worker fails to co-operate. All those provisions are open to immense amounts of interpretation by the compensation board.

The paper we have there lists other examples of where the board is given discretionary power. One of the greatest sources of disputes is the phrase: "...where the impairment of the earnings capacity of the worker is significantly greater than is usual for the nature and degree of the injury." There is not a clear legislative intent there. The board never has satisfactorily interpreted that provision. An immense amount of the litigation and the complaints that arise out of the workers' compensation system come because of the vagueness of that phrase alone and the board's refusal to structure its discretion, its refusal to tell us what it thinks that provision means. You can see that discretionary provisions that give direct discretion or convey power to the board in vague terms create an immense amount of discretion.

The problems with the discretion are twofold: first, the board cannot be regarded as a fair player in interpreting these provisions. It is an undeniable fact that the board has an unfunded liability in the billions of dollars. The effort to reduce the unfunded liability permeates all aspects of the board's operations at this point. That is the number one corporate goal of the compensation board: to reduce its unfunded liability. In analysing the motives of the compensation board at this point, a monopoly insurance and a monopoly insurer is a more adequate way of looking at the board than as a public service provider.

There are a number of examples listed in our brief about interpretations of the Workers' Compensation Act that we feel have been incredibly unfair to

workers: the reading down of supplementary provisions to be temporary, found nowhere within the act, found only within the policy directives of the compensation board; the board's recent decisions on retroactivity of chronic pain benefits, unsupportable by the legislation, in fact, not supported by the Workers' Compensation Appeals Tribunal. There are extremely high burdens of proof in industrial disease claims.

These are just a number of examples of why we believe the board cannot be trusted to interpret extremely broad provisions within the Workers' Compensation Act. The second aspect and the second problem with discretion is that the board fails to adequately structure its discretion. The board's failure to adequately structure its discretion leads to chaotic and inconsistent adjudication.

This is a concept that is not brought up very often, but what it results from is that the board has failed to articulate standards by which compensation payments will be paid. Provisions like impairment of earnings capacity and what that means are not articulated in board policy. They say they have an interpretation and if something like the appeals tribunal disagrees with it, they may subject it to review under section 86n. But simply determining what the board policy is and when a supplement will be payable is almost impossible.

I give an example in the paper. Consider the case of an injured worker applying for a pension supplement. Is the worker entitled? The act is much too vague to provide an answer. Whatever answer is to be found in the available board policy manuals has been supplanted by more recent board policies which, although not secret, do require an insider's knowledge and are not kept in the policy manuals. There may or may not exist internal board memos altering the effect of the board policy, but it is unclear at what level of authority within the board authority to release such memos can be found.

Regardless, even in the policies, there is very little guidance on essential matters, such as what constitutes an "impairment of earnings capacity significantly greater than usual." The personal opinions of the adjudicators in such circumstances are usually determinative. On appeal to the appeals tribunal, the appeals tribunal may apply different criteria, and different hearing panels in the appeals tribunal may take different views on that question.

Once that decision is made, the board may review the determination of the appeals tribunal on a question of law or policy. The board's review may or may not be binding on the appeals tribunal. So you start off down that long road of trying to figure out whether a worker is entitled to pension supplements. It depends on who decides the case and at what level you stop, whether you appeal or you do not appeal. This should not exist; this is a mass adjudication system. There should be some amount of certainty in the system. We believe that is necessary to articulate standards.

These criticisms are not mine alone. In decision 915 of the Workers' Compensation Appeals Tribunal dealing with a case on pensions, an appendix to that decision describes the process that that panel of the appeals tribunal went through to try to determine what board policy was. In this panel's opinion, board policy or practices that are inconsistent with written policy directives or guidelines are not effective to determine the rights, benefits or obligations of a worker or employer, unless the evidence is that the practice in question has been authorized by the board's internal decision-making process.

The parties are entitled to rely on published board documents as prima facie evidence of decisions the board has made on general policy and practice issues. Board officials and adjudicators are not entitled to ignore such decisions in deciding rights in a particular case. But where the evidence of an unauthorized change is clear, that change must be given effect, even though the published directives and guidelines are inconsistent."

So what is the law? How do you decide the case? It depends on things that are not written, that are not enunciated. We think that is wrong. We think that a lot of unnecessary hardship and aggravation is created by the board's failure to articulate policies and by the board's failure to structure the discretion that is granted to it within the legislation.

The third point that I would like to have John talk to you about is the problems that arise because the board is not answerable for the interpretation of its legislation. The board can, and I suggest has, come down with illegal interpretations of some of the provisions of the Workers' Compensation Act, and there is no effective way of holding the board to account.

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The board uses section 86n of the Workers' Compensation Act to review decisions of the Workers' Compensation Appeals Tribunal. Its ability to bind the appeals tribunal is unclear from the provisions of the legislation, and a lot of havoc and hardship has resulted from the board's failure to be held accountable and because of the unclearness in the relationship between the appeals tribunal and the WCB.

Mr. Chairman: Mr. Dee, have you decided to use your half hour for the presentation rather than some time for exchange? Just as long as you are aware of that.

Mr. McKinnon: All right. Thanks. I will not take up too much of your time with specific examples, but the majority of the injured workers I am involved with have been awarded compensation for a condition of chronic pain related to their industrial accident.

These cases are currently being reviewed by the board of directors at the WCB under section 86n. We have organized ourselves into a group in order to have some kind of an effective voice to protest the situation. I will not go into the details of that right now. I think that it is telling, though, that Bill 162 does nothing about the travesty that is created by section 86n.

Under section 86n, the board can be clearly seen to be right out of control. There are now 24 cases, I believe, whose benefits are being reviewed by the board's authority to stop a decision of the WCAT and put it on hold if it involves a question of the general law and policy of the act.

To give you an idea of the time situation of some individuals, one of the injured workers whom I am representing had her accident in June 1984. She was cut off benefits in February 1985 and then began the appeal process. She finally was heard at the WCAT in December 1985, got her decision in October 1986, and the WCAT concluded:

"The worker's disability (her ongoing pain with resultant impairment of function) results from the injury caused by the work accident and it is therefore compensable. The panel therefore feels that the worker should be assessed for a permanent disability award...to be made retroactive to the date

benefits stopped."

Now, that is hardly a highly controversial finding. It is a question of fact. They said that she has got a disability and it is related to her accident. Nothing happened. From October 1986, the board refused to implement the decision. In December 1987, after intervention by the Ombudsman, the WCAT's general counsel, the board's general counsel and an MPP, the board finally agreed to assess her. Before that, it had called her in and assessed her as having a zero permanent disability in spite of the WCAT's conclusion that she has a permanent disability and she should receive compensation for it.

In the course of this wrangling, the board offered to reassess her and to pay her compensation retroactive to the date of her disability as directed by the WCAT. It finally did, in December 1987, assess her and awarded her compensation from that date onwards, but it has refused to honour the written commitment from the general counsel's office to pay the benefits retroactively. It was just doing nothing.

It was not until February 1988 that the general counsel of the WCAT had to write to the board and say, "Look, either you review her case under 36n or you pay her benefits, but you can't sit on it for a year and a half after the decision and just not do anything." And that is an example of what the board is doing with these cases.

It was not until June 1988, more than a year and a half after the WCAT decision, that the board of directors of the WCB decided to throw her into the pile of injured workers who are being reviewed for chronic pain benefits. This is just an example of a discretionary authority that has gone out of control.

I will not go into any further examples, because I know Garth has some other points that he wants to make.

Mr. Dee: We have made a number of recommendations on how to reduce the amount of discretion. If you turn to page 10 of the brief that we put in on board discretion and why the system does not work, I am not going to pay any attention to the first three of those provisions. Basically, they have to do with how you grant authority to the board with the statute and the methods used to reduce that. Other people from the provincial network will be speaking on specific provisions of the act and they will be making recommendations on those.

I would like to turn your attention to page 11 and point 4. The Workers' Compensation Board needs to establish one set of policy manuals. That set of policy manuals has to be used for internal and external use, and no deviation from those policy manuals is to be allowed or authorized. The policy manuals need to be under the control and direction of the corporate board of the WCB. Policy cannot be allowed to be made on an ad hoc basis on various levels from different people within the compensation board whose relationships to each other we cannot determine from the outside.

On the second-last page of the brief there is an attempt to define what official policy of the board might look like in statutory terms. That is on page 15.

Without spending time on that, on page 12 of the brief we have proposed a new way to propose section 86n. The board claims to need a power to deal with decisions of the WCAT that it finds offensive or contrary to its long-standing interpretations of the act. What we have tried to do here is

create a system where the board could ask the appeals tribunal to reconsider its decision in light of the board's view that WCAT's interpretation is incorrect.

The provisions are here. Basically what they allow for is that where the board has an official policy, if WCAT makes a decision that disagrees with the board's official policy or where WCAT claims that an official policy of the board does not comply with the legislation, the compensation board can ask the appeals tribunal to reconsider its decision. But the final level of authority to determine whether any action of the board itself complies with the legislation should be left to the appeals tribunal, because it is offensive for the board to sit in judgement on itself. What authority can you turn to if the board does not comply with its own legislation? Section 86n allows the board to sit in judgement on itself, and it is our submission that that is offensive.

The provisions in section 86n that we propose deal with some of the complications that arise—the time requirements needed and the necessity of payments to workers caught up in those situations—and I will not go into them. However, I suggest that this panel would be serving a highly useful function by recommending that the present section 86n be abolished and a new one substituted for it and I submit that our attempts might be used as a beginning in reaching a new decision on what section 86n of a new act would look like.

Mr. Chairman: Thank you very much for a very comprehensive brief. Everyone appreciates it. It is time for a couple of quick questions, I believe. Miss Martel is first on the list.

Miss Martel: A couple of clinics have come before us to talk about the discretionary power of the board, but your presentation has been by far the most focused and most direct in condemning that. I noticed on page 7—you did not have time to get to it—that you said that: "Bill 162 constitutes a power grab by the board. It is no surprise that the impetus for this bill comes from the board and that the board staff have been seconded to the Ministry of Labour to help ensure its passage." I am sorry that Mr. McDonald not here today to hear you say that, but I am sure it will be passed on to him.

Given the discretionary power inherent in Bill 162, where do you think your clinic is going to end up if this bill is passed and you have to start dealing with all of this discretion?

Mr. Dee: My clinic does not deal with workers' compensation. John's does.

Mr. McKinnon: Clearly it is going to expand the areas of dispute and it is going to increase the level of dissatisfaction on the part of injured workers, and that is going to have a number of effects. It is going to obviously increase the case load at the clinics. It is going to completely submerge the worker adviser offices, which are already outnumbered by the number of injured workers seeking service.

It is also going to have a more threatening effect on the workers' compensation system, because as you increase the level of dissatisfaction with workers' compensation on the part of injured workers, there are going to be more injured workers seeking legal advice for ways to challenge this decision-making in the court. You are going to find more court challenges to individual decisions by the WCB and you are going to find more court

challenges to the principle of workers' compensation in the first place.

Workers' compensation was historically the result of a tradeoff where injured workers gave up the right to sue in the courts in return for a more speedy, humane and fair compensation system. The more that workers' compensation begins to pale in comparison to what you get in the courts, the less fair that bargain seems.

As you have seen in Alberta and Newfoundland, their injured workers are very seriously challenging the principle of workers' compensation on the ground that it interferes with their equality rights, their rights to equal treatment and equal compensation in the courts, and on the ground that it interferes with their rights to security of the person. They have lost their rights to seek fair compensation in the courts.

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Nowadays, the courts are a much more attractive opportunity than they were back in 1915. We have a fairly comprehensive legal aid system and we have a revamped set of rules and procedures in the higher courts. I think there is a much greater danger of serious challenges even to the principle of workers' compensation. Personally, I do not think that would be a good thing. I do not think that going back to the court system is necessarily the answer for injured workers.

Mr. Dietsch: I found it a bit ironic in your opening comments that you as an individual who are going to be appearing before us twice would criticize the committee for not having extended to everyone—especially when I look out in the audience and I see individuals who have also presented twice, some four or five times. I feel like I know Mr. White on a personal basis because he has been here so many times, as well as Mr. Crocker and others.

Mr. Wildman: On a point of order, Mr. Chairman: Those individuals are here from widely different groups which have appeared.

Mr. Dietsch: However, I did want to indicate to you, before I was so rudely interrupted, that I appreciated some of your points that were raised. I suggest that if you know of other individuals as well who have views that they would like to present, just because we are not all lawyers, it does not mean we do not get a sense of comprehension from written briefs, which I feel very seriously about taking every bit as much in a serious nature as those which come before us vocally.

Discretion is the area that I wanted to zero in on. I was a union representative for some period of time and represented workers at the compensation board and have a feel for that area of discretion that you talk about. I want to know, in particular, whether or not you felt, regarding your point 4, that policy should be in terms of regulation. I am sure you are well aware of the way regulations are put out, so that there is not flexibility, I guess you would call it, in your point. Is that how you see it coming into play?

Mr. Dee: No, we see regulations as being antithetical to that concept. The board has regulation-making authority now under schedule 3 of the Workers' Compensation Act for industrial disease. I do not believe they have made an amendment to that regulation in the last 25 years at least, probably 30 years.

There is no consequence to the board of failure to make a regulation. If the Workers' Compensation Appeals Tribunal does not like the board's policy, the board can still review. It does not have to have anything in regulation. What the board is going to do with that regulation-making authority is to stop using section 86n. Any time the appeals tribunal does something that they do not like, they are going to pass a regulation at that point to get their way. That is the only use of the regulations that we anticipate for the board.

Mr. Dietsch: In relation to that and some of the internal changes that took place under Bill 101, have you seen any kind of an improvement? I am speaking about, you know, where the independent board of directors is represented by both labour and employers and injured workers, etc. Do you not see that as a mechanism for solid regulations in terms of benefits for discretionary powers?

Mr. Dee: No, we do not. We think there needs to be something in the legislation that requires the board to put its policy interpretations in writing, put them up front and use them inside and outside the board. We have a right to know what the law is when the people we represent go in front of the board. They do not tell us the law when we get a result that they do not like; at that point they tell us that the appeals tribunal got it wrong and that they are going to review it.

I got frustrated banging my head into the wall at the compensation board until I realized that they kept on moving the wall. Every time we found a successful avenue, they would change the wall. We do not think that is fair. We want to know what laws and what rules we are being judged against. The regulation-making authority as it exists simply increases the board's power with respect to the appeals tribunal and with respect to the Legislature. We think that is wrong.

Mr. Chairman: Mr. McKinnon and Mr. Dee, thank you very much for your presentation to the committee.

The next presentation is from the Canadian Union of Public Employees. Gentlemen, welcome to the committee. You have the next half hour to split up as you choose, either entirely your presentation or allowing time for an exchange with members. Would you introduce your group?

CANADIAN UNION OF PUBLIC EMPLOYEES

Mr. Stokes: My name is Michael Stokes. I am president of the Ontario division of CUPE. I have with me today John Murphy, representative from our health and safety committee in the division, and as resource people I have Jack White, Nancy Rosenberg and also Carol Haffenden, a member of Local 1750, Workers' Compensation Board.

I would like to start off by saying I think it is important to look at Bill 162 through the eyes of a worker. Unfortunately, this legislation appears to have been developed by bureaucrats, politicians and lawyers who have not had to use the system, nor are they ever likely to given the professions they have chosen. I am sure that if they did, the text of the legislation would be quite different.

The Ontario division of the Canadian Union of Public Employees welcomes this opportunity to present its views on Bill 162. CUPE is the largest trade union in Canada. The Ontario division is the largest section of that union.

Our members work for boards of education, municipalities, hospitals, universities, nursing homes, homes for the aged, electrical utilities, social service agencies, welfare agencies, the Ontario Housing Corp. and the Workers' Compensation Board.

I think it is worth while to mention at this time that the issue of workers' compensation is especially important to CUPE members who work in the health care field, since they lack the proper protection under the Occupational Health and Safety Act and are therefore more likely to need a just compensation system. The system, for the most part, does well in the processing of straightforward, short-term, full-recovery cases. Unfortunately, in the more difficult cases where a worker has been left with a permanent partial disability, the board's record has been appalling.

Our members simply want the justice that was promised by the workers' compensation system. With our part of the historical bargain, we cannot sue our employers when unsafe job conditions cause injury or diseases. We have no other legal recourse for pain and suffering, for economic loss, for the destruction to our lives or the lives of our families that occur when we are injured on the job. We have no alternative legal recourse even for death. All we have is the workers' compensation system. It is imperative that this system be made just, socially responsible and humane. Bill 162 does not bring us closer to this goal but takes us further away.

Our brief will highlight the three main areas affected by Bill 162: compensation for permanent partial disability and the introduction of the dual award system; reinstatement; and rehabilitation.

It has long been acknowledged that the meat chart figures bear no relation to the impact on future loss of earnings. We agree that the move to recognize this and to separate out the dual concepts of economic and noneconomic loss is logically sound. However, what Bill 162 proposes would work directly against injured workers.

The major problem with the proposed formula is simply that it is designed to produce extremely low awards. It is important to remember that this portion of the proposed pension is the only pension which is assured to the worker with a permanent impairment. A loss of earnings pension may or may not be awarded in any particular case, and even if awarded, would never be secure.

The fact that the noneconomic pension will often be the only pension, and will always be the only secure pension, is an important context in which to consider the proposal. Considered in that context, there can be no justification for the pitifully small pensions which this formula is designed to generate.

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We would ask the question, why a \$65,000 maximum? This portion of the pension is intended to be for noneconomic loss, the occupational counterpart of general damages for pain and suffering. These damages were for a time subject to a court-imposed maximum of \$100,000. All of the resulting awards have one thing in common: They are shockingly inadequate. To refer to the table on page 5 of our brief for one example, a 25-year-old worker with 100 per cent impairment would receive the maximum \$65,000, or \$135.42 a month.

The other problem with this proposal is that it does nothing to rectify

the problems presented by a rating schedule that is accessible, understandable and usable only by the board or its doctors. Historically, this has meant almost total control of clinical assessment processes with little opportunity for the workers' doctors to have any genuine input or to effectively challenge the assessments.

We are equally disturbed by the procedural aspects proposed. The original bill provided that this assessment would be done by a board doctor. The new amendments to the amendments now apparently give the worker a choice between a board doctor and a doctor from a government-appointed roster. This roster of doctors may be government-appointed, but only on the recommendation of the board. We would still have the board choosing the doctors. Workers should have the unqualified right to choose the doctors who assess them.

Following this determination, the worker would have 90 days in which to request a reconsideration. This time limit is another added restriction that is not presently in the act.

Once the request is made, the board selects three doctors from the board-recommended government roster. The worker gets to choose a doctor from this list if the employer agrees. If not, then the board appoints the doctor. Alternatively, if the board itself decides that it is impractical, it does not even offer the choice. It simply appoints the doctor itself. What this means is that the board, the initial decision-maker, has almost total control over the way in which its own decision is challenged. The worker has very little input.

Following reconsideration, if there is any, the board is instructed to reconsider its own assessment. It does not have to change it, just reconsider it. This procedure gives far too much discretionary power to the board. It is like hiring a fox to guard your hen-house. Initially, Bill 162 not only proposed this obviously unfair procedure, but went so far as to deny any right of appeal. The minister's new amendments apparently restore the rights of appeal. However, we have not seen any amendments to verify whether the rights of appeal or the choice of doctors exists in the new text.

With regard to future assessments, problems are also evident in the provisions that have been put forward here. After initial assessment, there will be no further assessments unless the worker "suffers a significant deterioration of condition that was not anticipated at the time of the most recent medical assessment," and provided that 12 months have gone by since the last assessment. What is significant? What is unanticipated? Anticipated by whom? How will the many very problematic cases with back injuries be dealt with? There is almost always deterioration in back injuries. Can it ever be said to be unanticipated?

Even more outrageous, however, is the two-to-a-lifetime limit on reassessments even when the threshold test is met. What this means is that once there have been two reassessments, it does not matter how significant a deterioration is suffered or how unanticipated it is—the Workers' Compensation Board is no longer responsible. How realistic is this medically when you consider deterioration that is compounded by ageing, for example?

We cannot predict our medical future. I know I cannot. I would challenge anyone here who can. Even our doctors cannot. It is like gambling in a casino. You are allowed only two cards and you must decide by medical fortune-telling, I guess, when to play them. If you play them too soon, you are out of the game. The worker stands every chance of losing to the house. I have been in

casinos and they are not built on people's winnings.

Economic Loss: The concept of compensation for economic loss, separate and apart from noneconomic loss, is a good one. However, the loss-of-earnings pension is based on a formula that would pay 90 per cent of the difference between the wages the worker earned before injury and the wages that the "board considers that the worker is able to earn after the injury in suitable and available employment."

This does not mean the wages earned in a job the worker actually gets after the injury. This does not even necessarily mean the wages earned in a job the worker has a good chance of getting. We believe this will mean phantom wages earned in phantom jobs which the board will deem to be "suitable and available."

Our belief is based on the fact that the Workers' Compensation Board in British Columbia works with similar wording in a similar dual award system that requires deeming. That board has been severely criticized with respect to the deeming of nonexistent jobs generated by a computerized list, jobs which have no basis in reality but which are used in many cases to reduce workers' entitlement to loss-of-earnings pensions.

Saskatchewan has also had some experience with this. Injured workers in Saskatchewan have been deemed able to perform work for which they were not trained, deemed able to get jobs in areas where opportunities did not exist and deemed able to get jobs at unrealistic rates of pay.

Deeming is not new to Ontario. While not presently an aspect of pension calculation, deeming has been used to calculate pension supplements since November 1987. The board determines the kinds of jobs workers can perform, whether or not they are available to the worker. Earnings from these deemed jobs become deemed earnings of the worker and are included in the determination of whether the impairment of earning capacity is "significantly greater than usual." On that basis, supplements are awarded.

Deeming has been consistently used to inflate earnings capacity and ensure that supplements are reduced or not awarded. We do not doubt for a moment that it would be similarly applied to reduce or eradicate future loss-of-earnings pensions in Ontario.

Skipping over to page 14, duration of loss-of-earnings benefits is another problem area. Once again, discretionary powers given to the board are too open-ended. There is no assurance of equality in treatment and the system does not allow for any long-range planning by injured workers. It could even discourage rehabilitation attempts. The age of 65 is merely a maximum cutoff point. The board has the power to review the pension at any time and to cut it off at any time.

Workers' right to future reassessments: In order to fully appreciate this completely open-ended power that the board has to review, alter or stop a loss-of-earnings pension at any time, you have to compare it with the workers' right of review. Of course, there is little to compare here because there is no right to review for a worker. There are the mandatory reviews at two and five years and within two years after a reconsideration of the impairment percentage takes place if it results in an increase.

What does that amount to? The remote possibility that a worker might be able to get a review of his or her loss-of-earnings pension if he or she has

had a significant unanticipated medical deterioration, and again, if he or she has not used up his or her two chances to apply for review on that basis. It is a little bit like jumping through hoops.

There is no review for significant economic deterioration. There is no provision at all for the worker who suffers a permanent injury, returns to his old employer and suffers no immediate loss of earnings, but instead suffers a loss of earnings much later. His old employer, for instance, becomes defunct six years after he comes back to work, and with his disability the worker cannot get employment with a new employer. He was not awarded a loss-of-earnings pension in the first place. He will not get one now when he needs it.

If he was awarded a small pension in the first place, he will not be able to increase it now unless he simultaneously suffers a significant unanticipated medical deterioration and somehow manages to jump through the rest of the hoops. The worker's chance of obtaining a loss-of-earnings review in this situation is more than remote; it is virtually impossible.

Under exclusions, a major problem with the reinstatement proposal is the vast number of workers excluded from it. There is no good reason for such sweeping exclusions or indeed for any exclusions.

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Lack of remedy: While section 54b purports to provide a limited right to reinstatement, it provides no real remedy for noncompliance. If an employer fails to comply, a penalty may be levied. The worker may be paid for the equivalent of temporary total disability payments under section 40 for a maximum of one year. However, this does not get the worker reinstated in his or her job. It allows the employer to simply make a decision to pay the penalty rather than reinstate the worker. This will be a discretionary thing among employers. Small employers will be forced to take injured workers back; larger employers that can afford it will pay the penalty.

The Quebec reinstatement legislation, the Human Rights Code in Ontario, the labour board and the arbitration board all have the power to order reinstatement of a worker with back pay and benefits when an employer refuses to reinstate him. Only with this kind of remedy can a true right of reinstatement be said to exist. We need that basic right of reinstatement. It may be qualified, but we need that basic right.

Right to rehabilitation: The only actual right given to the worker is a board obligation to contact the worker within 45 days of the filing of the notice of accident and to offer an assessment if the worker has not returned within six months. The actual rehabilitation offer remains completely within the board's discretion. Bill 162 offers the worker a right not to rehabilitation, but to a contact and an assessment.

Job search assistance: These services remain within the board's discretion. Moreover, it is now limited to six months with a possible extension of another six months. There is no current restriction in the act on job search assistance, so this in effect is a cutback or a takeaway.

Clearly, rehabilitation is a crucial aspect of workers' compensation. The whole system of compensation depends on rehabilitation for its effectiveness. The system can never be successful without a genuine and effective commitment to rehabilitation. Only when the injured worker has a

statutory right to rehabilitation and a corollary right to reinstatement will there even exist the possibility of such a commitment.

In conclusion, we are also very concerned about other negative changes taking place in the workers' compensation system. The purpose of these hearings and this brief is to discuss Bill 162. However, this legislation is not proposed in a vacuum. The context in which it is introduced is one of increasing momentum in the move to dilute the whole concept of workers' compensation. This in turn is part of a larger picture of increasingly virulent attacks by business interests and legislators on government programs and services. While workers' compensation is not, strictly speaking, a government service, it is apparently subject to enough government control to become liable to the same pressures.

The reorganization of the WCB now taking place, and in particular the medical rehabilitation strategy, which includes the closure of Downsview rehabilitation centre, is clearly aimed at contracting out board services—one of the benefits of free trade, I guess.

Another example of the board's apparent acquiescence in the agenda of business interests is the introduction of its deeming policy. The board did not wait for legislative change to introduce deeming. It has already been developed, as I said, since November 1987. Now they are going to expand it into the pension calculations. The board policy has paved the way. Bill 162 proposes to legalize it now through the legislative provision. This seems hardly more than an effort to provide the board with the legislative mandate to carry out what it has already begun in direct response to employer pressure.

It is our view that this proposed legislation attempts to destroy the historical bargain of workers' compensation that I mentioned earlier. It has been obvious for many years that workers have been shortchanged by this, in quotes, bargain. Bill 162 tell us in no uncertain terms that the government agenda is not to eradicate that unfairness, but rather to seriously escalate it.

Bill 162 should not be implemented, nor should it be further amended. It is seriously flawed, not just in its specific provisions but in its general approach and in the view of workers' compensation out of which it grew and which it represents. It is our view that the government must start this process over from the beginning and must sit down with injured workers and labour representatives and begin a process of genuine consultation. Bill 162 should not be implemented.

Miss Martel: I would like to ask Carol a question about the rehabilitation counsellors at the board, if she does not mind answering that. I am wondering if CUPE Local 1750 appeared before the Minna-Majesky task force and what the presentation would have been at that time in terms of rehab services being offered by the board.

Ms. Haffenden: That was a long time ago; that was December 1986. We proposed reduced case loads as dealing with a more holistic approach to rehabilitation, and certainly a better managed and more responsive and sensitive system to the handling of injured workers. Those were the two key areas.

Miss Martel: In terms of the recommendations made by the task force, the prime one, that rehabilitation should be a statutory right, what was CUPE's response to that? You represent the rehab counsellors.

Ms. Haffenden: Yes. We agree wholeheartedly that rehabilitation should be a right of workers and not something that has to be determined, as outlined in this brief, with respect to workers having to go through hoops and qualify for it. It should be a statutory right.

Miss Martel: In terms of the present legislation, where the only thing that is guaranteed is an assessment and a call at 45 days, do you think that is going to make rehabilitation any better for injured workers in this province?

Ms. Haffenden: No. It smacks very much of a prefabricated rehabilitation program instead of the holistic approach, with the time frames and so on.

Not every worker is the same, not every injury is the same, not every circumstance is the same, not every community is the same in terms of job opportunities. The board has always maintained, and I do not think the system has changed that much, that individual circumstances should be dealt with on an individual basis. Now they have set up a system of slotting workers into time frames of entitlement and that is all you are entitled to regardless of the circumstances. It completely deviates from the task force report of a more holistic approach, individualized and dealing with the worker as a person and not just as a broken body part.

Mr. Dietsch: I was curious about your comments on page 6 with respect to the medical assessment and the use of what you consider to be the board doctors. It is my understanding that if there is a dispute over the doctors, the injured worker has an opportunity to choose between the board doctor who examined him or a roster of doctors. Recognizing that the roster of doctors is appointed by the Lieutenant Governor and that the recommendations of names of doctors of course have to come from some place, I am wondering whether it would be acceptable on your part if this roster had doctors who were suggested by the labour movement. Would that be acceptable to you in that relationship?

Mr. White: Could I answer that?

Mr. Dietsch: Sure. Welcome back.

Mr. White: Our concern is that the majority of workers do not know board doctors, and certainly do not know the government-appointed doctors, but certainly know the treatment they have received from their family doctor or from the specialist who performed the last operation. Certainly that is the physician, in our opinion, who should be consulted and should be making the assessment of that worker's permanent impairment.

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Mr. Dietsch: But surely if there is a dispute over the use of doctors, which I can readily understand—as I said to the previous presenter, I have had experience in making cases before the WCB and know full well that there is always that opportunity for dispute between my family physician and the physician who is used by the board. Neither seems to be conveniently happy, shall we say, with either of those two positions.

However, if we are looking at trying to select a qualified practitioner who is put forward on a roster, I guess my question that I asked previously and ask again is, would it be acceptable to you if there were labour-appointed

doctors on this roster?

Mr. White: It is labour's position that the worker should have the choice. Recognize again that the worker who is given the names of three specialists probably does not know any of them. You are just picking out of the blue, and that certainly is not what we would consider fair and equitable.

Mr. Stokes: I would have no more right in picking a doctor for an injured worker than what I am saying the board has no right to do. Given the fact that we had some trouble with this part of the legislation because of the fact that we have not seen these purported amendments other than in the newspaper, we had some trouble with this section. We still feel that the basic and unqualified determination on who your doctor should be should be up to the worker.

Mr. Dietsch: I know how thorough CUPE is and I compliment you on your thoroughness in your presentation, and I have a great deal of respect for other unions, having served for a great number of years in that area. I recognize that other unions have indicated that they share a fairness in terms of selecting from an independent roster as long as there are some labour representatives, or names that have been suggested by labour, on there. I understand what you are saying, though.

Mr. White: I have not heard that.

Mr. Dietsch: They have been presented before us.

Mrs. Marland: I think the point you are making is not difficult to understand. We discussed this at length yesterday, because the more we hear, certainly speaking for our caucus, the more we recognize the absurdity of having someone evaluate and assess you or me, as an individual, who does not know me. It is just not practical, it is not real. The fact is—and I should be asking you a question—is it not true that—

Miss Martel: You are doing a great job.

Mrs. Marland: Yes, but I am very conscientious about this.

Is it not true that injuries are individual? You and I may work on the same job, we may in fact sustain the same injury, but the impact on you and the impact on me is so individual. The more you know about me as an individual, the more you know about my pain threshold, the interpretation of how that is going to affect me for the rest of my life or two years or five years or whatever is so individual, and that is where it gets back to the real essence of the doctor knowing you.

Surely, when you look at physicians as a profession, I hope to goodness we are not in fear that we are going to get a lot of our own doctors perjuring themselves by signing off a compensable injury. That is not going to happen. I would certainly put any physician up against any arbitrary list that has been either plucked out of a hat or appointed by the board or whoever.

The point is that a physician is a physician. They are there to look after the interests of that worker. Frankly, as I said yesterday, the more I hear it the more I realize it is in the interest of the employer to have someone who really knows that worker assess what his problem is and may be, and that is what you are trying to tell us here.

Mr. Stokes: That is right.

Mr. Chairman: Thank you gentlemen, Mr. Stokes, Mr. White, et al., for your presentation this morning. We appreciate it.

The next presentation is from Stringer, Brisbin, Humphrey, barristers and solicitors. This is the blue-covered folder. Are you Mr. Salisbury?

Mr. Salisbury: That is correct.

Mr. Chairman: Welcome to the committee. You have the next half-hour to do with as you see fit.

STRINGER, BRISBIN, HUMPHREY

Mr. Salisbury: I am going to try to do something which, I suppose, is unnatural for a lawyer, and that is to keep my comments very brief this morning.

It may come as somewhat of a surprise that much of what I have to say this morning will mirror some of the remarks I heard from Mr. McKinnon and Mr. Dee. I think that would be surprising, given that I am an advocate on behalf of employers. I suppose, historically, there is an explanation for that in that I was counsel on the Villanucci case, representing the community clinics. However, in my present occupation as an advocate with Stringer, Brisbin, Humphrey, my practice is restricted to representing employers on workers' compensation matters, among other employment matters.

Our firm is actively involved in what we like to describe as a proactive approach to all employment matters, and that includes the publication of a bimonthly report called the Workers' Compensation Review. Recently, through our firm, a number of the lawyers in our office published Ontario Workers' Compensation: An Employers' Guide, which I suppose is the employers' side to Mr. Dee's book.

I appear before you this morning not acting as an advocate on behalf of any particular client, but really representing a firm that is an interested party which ultimately is going to have to explain this legislation to its clients if it is enacted. I suppose, accordingly, my motives are not completely altruistic in that regard. By saying that I am acting as my own lawyer, I am very sensitive to that old adage about he who acts as his own lawyer.

The Minister of Labour (Mr. Sorbara), at the commencement of these hearings, made a number of comments which we support. Compensation based on a clinical rating system, often referred to as the meat chart, does not fairly reflect the loss in wages due to illness or injury. Existing vocational rehabilitation programs offered by the Workers' Compensation Board have not been effective, primarily because they have not been initiated early enough after the accident or injury. Too many injured workers are being left unemployed or underemployed after experiencing work-related disability.

I suggest to you that none of the foregoing comments represents concerns that are unique to workers. In my experience, most employers in Ontario consider their employees far too valuable to be lost as a consequence of an industrial accident.

I do not think it is appropriate that I comment any further as to the

policy implications of the proposed legislation and I intend to limit my comments this morning to some of the structural or procedural problems which I foresee will arise if Bill 162 is enacted in its current form.

When members of my firm first turned to look at analysing Bill 162 and asked ourselves, "What impact is this going to have on the people we represent?" we frequently came to the conclusion that it would depend on what, if any, regulations were going to be made by the Workers' Compensation Board to flesh out the very bare bones of this bill.

The board has for some time, pursuant to section 69 of the act, had the ability to make regulations. As far as I am aware, they have exercised that right under the act on only two occasions: regulation 950, dealing with first-aid requirements, and regulation 951, which deals with industry inclusions and accident fund contributions.

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As we have heard, most persons involved in WCB matters have learned that the act and regulations, by and large, play a very minor and secondary role when it comes to analysing what happens in a board decision. That is dependent on the written board policies, the green binders that we all have access to, and, as we have also previously heard, the unwritten policies, those ones that are more difficult to get your hands on.

All of those policies have been the subject of review by the Workers' Compensation Appeals Tribunal. I suggest the appeals tribunal has accurately taken the position that those policies which are contrary to the act are not persuasive, nor are they binding on that tribunal.

But I would like to point out that, by design or result, what Bill 162 will require the board to do is depart from being a board that makes policy and become one responsible for regulation drafting. It is specifically set out in the bill that it anticipates that the board is going to have to draft regulations establishing the criteria for assessing the personal and vocational characteristics of a worker, to establish the criteria for determining what constitutes "suitable and available employment" and determining what classes or subclasses of employers or workers will be exempt from the reinstatement and re-employment provisions.

It is also going to have to draft regulations determining the criteria as to what constitutes "alternate employment of a nature and at earnings comparable to" a worker's pre-injury employment and it is also specifically suggested in Bill 162 that the board draft regulations as to what are the essential duties of an employee's job.

That is not an exhaustive list, and presumably there will be other matters that should be addressed by regulation as well, yet none of those issues is before this committee and it is unlikely that the board will allow interested parties an effective opportunity to address the form that those regulations should take.

The other possibility, and a really likely one, is that the board will simply never get around to drafting any regulations on these matters. What I would suggest, from the employers' community, is that the current climate of restrained conflict between the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal is going to continue, that mere policy will be subject to critical review by that tribunal and that the uncertainty for the

employer community will continue.

Bill 162 was an opportunity to bring some clarity and certainty to the economic consequences of an industrial accident for both workers and employers. In the absence of any clear definition in the bill and in the absence of knowing what the draft regulations might provide, the bill is simply contributing to that current inability of employers to predict with any degree of confidence the consequences of an industrial accident.

The minister, as a matter of policy, has suggested that the impact of Bill 162 will be cost neutral. How that can be said with any assurance is as unclear as the terms that now require regulatory definition.

In his remarks, the Minister of Labour recognized the potential conflict between Bill 162 and the human rights legislation. What has not been recognized, so far as I am aware, is that there is going to be a conflict between this legislation and those obligations imposed on employers under collective bargaining regimes. That is with respect to the reinstatement provisions set out in subsection 54b(2) of Bill 162.

The duty imposed is to reinstate an injured worker in either the pre-injury position or a similar position with comparable earnings. Where there is a conflict with seniority rights under a collective agreement, subsection 54b(8) provides that the Workers' Compensation Act reinstatement rights prevail.

The concern for employers is that the obligation on an employer to reinstate once an injured worker is, using the terms of the bill, "available for employment," may provide an opportunity for employees who have less seniority to bump more senior employees in a layoff situation.

Although the bill specifies when an employer's obligation to re-employ stops, it does not specify when an employer's obligation begins. Although it cannot arise until the worker is, using the terms of the bill, "available for employment," there is no requirement that the worker contact the employer regarding availability. It may prove onerous for employers to determine when or where a worker is available, particularly since a misdetermination by an employer on that very important issue can result in liability for some severe penalties.

I will raise some questions. What if an employer has two or more injured workers who are, if there is a definition to this term, "available for employment" and he has only one job that constitutes "suitable employment," which is not defined presently, and we are awaiting the regulations on that? Without direction from this bill or from the legislation, the employer's interests may be best served by simply giving that job to the worker most likely to complain, through whatever route, and that may be through a grievance procedure in a unionized environment or through the complaint mechanisms under the bill. You will simply have to take a chance that the other employees will not have any gripes about that decision.

That lack of certainty and the creation of what is in essence a penalty-driven reinstatement provision cannot legitimately be the intention of this Legislature.

There is new drafting in Bill 162 concerning noneconomic loss. The proposed method of determining noneconomic loss does not address any of the concerns that were raised by the Workers' Compensation Appeals Tribunal in

decision 915.

I would suggest to you that any form of schedule, by its very nature, is going to be arbitrary and not reflective of individual circumstances. It appears really that one meat chart is going to be replaced by another meat chart, arguably a better meat chart, given that it is the current one being used in a lot of the American jurisdictions and it is the one drafted along the lines, as I understand it, of the American Medical Association.

Benefits which may be awarded under the noneconomic-loss head will range from a maximum of \$25,000 for an injured worker 65 years of age to a maximum of \$65,000 for an injured worker less than 25 years of age.

That is arbitrary, and any argument that you are getting away from a nonarbitrary system of determining compensation is simply incorrect. Compensation for noneconomic loss which is determined through the use of a formula will rarely be fair to both an injured worker and the employer who finances that payment.

If the policy decision has been made to provide compensation for noneconomic loss, then the legislation must acknowledge that it is embarking on considerations of tort principles of compensation. When compensation for permanently injured workers will be provided for such things as the minister indicated as being psychological distress or the loss of capacity for leisure activities, employers will be faced with costs that cannot be predicted and which a charting approach will not afford an opportunity for an employer to address on an individual basis.

I would suggest to you that the root of frustration for employers who must deal with the workers' compensation system is the uncertainty and the inability to predict with any confidence either the costs associated with particular injuries in the workplace or the outcome of particular claims.

I would suggest as well that the uncertainty is as a result of two factors. First, and perhaps foremost, is the vague language of the existing statute. The current workers' compensation legislation includes many terms and concepts which have been increasingly subject to definitional change. "Accident" and "arising out of or in the course of employment" are simply two of the more common terms which we are familiar with and concepts which have changed in their interpretation in recent years.

This committee is well aware of the competitive pressures Ontario businesses are under, and no lessening of those pressures in the future is readily apparent. In order to deal with those competitive pressures, Ontario employers need, as far as possible, to be able to predict with some confidence the economic consequences of injuries which occur in the workplace. Bill 162 increases, rather than decreases, this uncertainty.

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These committee hearings on Bill 162 provide a unique opportunity. It is an opportunity for the Legislature to address the concerns of both the employer and injured worker communities in respect of uncertainty in both the existing legislation and any amendments which, for policy reasons, might be proposed.

I would suggest that a review of the submissions which have been presented to this committee thus far indicates that the one concern which has

been addressed by all parties is the uncertainty of the legislation. We share that concern and join with that vast majority who have made presentations so far in calling for this committee to take advantage of this opportunity to clarify, define and render less uncertain workers' compensation legislation in this province.

In summary, we suggest the following points be considered by this committee in its review of the proposed Bill 162:

1. That the bill be amended to specify that seniority rights attained through collective bargaining will take precedence in reinstatement circumstances;
2. That the bill be amended to specify reinstatement procedures when there is a conflict between two or more injured workers, and that the penalty-driven elements which employers may be compelled to consider in reinstatement decisions be ameliorated or deleted altogether;
3. That the compensation for noneconomic loss be determined on an individual basis and not by a rigid and mechanical rating schedule which is, in point of fact, no different from the existing and unsatisfactory meat chart;
4. That as compensation for noneconomic loss is a tortious concept being introduced to workers' compensation legislation, employers ought to be given full opportunity to dispute claims of this nature;
5. That this committee take this unique opportunity to provide some certainty to employers and injured workers in this province by recommending greater definition in the Workers' Compensation Act, by recommending that the level of regulation-making to be undertaken by the Workers' Compensation Board be minimized and by recommending that an opportunity be given for the provisions for input from all affected parties into the definition of terms and concepts used in the Workers' Compensation Act.

As I indicated, I intended to keep my comments brief. That is what I came to say and I would welcome any questions you might have on those comments.

The Vice-Chairman: Thank you, Mr. Salisbury. We appreciate your brevity. It is interesting to note that yesterday and today we have had members of the bar who represent injured workers, followed by other members who represent employers, and both indicated concerns about the legislation.

Mr. Carrothers: I appreciated the comments, and in view of the brevity of the time, I just wanted to pick up on one area and perhaps expand your comments or get some clarification. It relates to the noneconomic loss and the method that is going to be used for determining. To relate to your comment, I am not sure anyone has really suggested that it is not going to be arbitrary; obviously, it is.

The concern I would have, and I would like to discuss this with you, is about moving into the tort area. The problem, I think, is that we have a very subjective measure of what is a person's pain and suffering. That is extremely subjective.

It would concern me, in terms of the costs of arriving at what an award might be, to be sort of having a hearing on every case, which I think is what you would end up getting into. Obviously, this is an attempt to strike a balance between something that is simple, straightforward and easy to

administer, with less discretion—because I think I hear you commenting that discretion should be limited—and balancing that off against the sense of rough justice, perhaps; balancing it against the costs of taking an individual set of hearings on every person and trying to determine what he individually is suffering in terms of pain and suffering.

How would you inject an ability to assess the individual's particular needs without creating a system that is just going to bog down in hearings and perhaps not result in getting anything or taking too long to get anything for the worker?

Mr. Salisbury: I am the last one to suggest either that we need more lawyers involved in the process or that we need to have more hearings. If anything, the whole structure of the appeals process needs to be reduced to one or two levels and one where the first decision is the right one and it is not simply one of going up through numerous levels until we finally get an adjudication on the point.

However, if we are going to get into compensation for noneconomic loss, then I think what has to be provided is an opportunity for the employer to make effective argument using those tort principles to say what would happen.

To talk about this historical compromise—which I do not personally believe and I think there is a strong argument to say it is incorrect—compensation is not a tradeoff of a right to sue, 80 or 90 years ago, for a piece of legislation; it is a piece of social legislation which reflects a number of obligations we have within society. I do not think that comparison, that it is a tradeoff between the right to sue, is an accurate one.

But if we are going to introduce into that social legislation something that is akin to tort principles, then you have to give the party that is paying the costs of those determinations an opportunity to make effective argument. Unfortunately, the only way you are going to be able to do that is to give employers an opportunity to get involved and to make representation, using arguments akin to what happens in the tort law.

We have seen in Canada, for example, that there is a cap on personal injury claims. There are very rigid rules that are applied when assessing personal injury claims as to how one determines noneconomic loss. That is not an easy answer, but I think that is something the legislation has to have addressed if we are going to make it work that way.

Mr. Carrothers: But has not the pain and suffering in the other areas of liability ended up with a sort of meat chart of its own? You look in the reports and come up with a huge chart of what decisions have been, and you end up almost looking at a type of injury and equating it to a dollar amount.

Your concern is the cost that this might be for the employer, if I hear what you are saying. I am wondering if trying to be so individual might not make the system more expensive for the employer and also create delays, that the end result might not be very different from what you get with the kind of rough and ready chart that is going to come out of this, and whether it would really be accomplishing what you want or even improving the system for both parties.

Mr. Salisbury: To some extent, I think we are probably dealing with perception as well. You have employers out there who, rightly or wrongly, believe that what workers' compensation is all about is that if something

happens on the job that causes a disability for a worker, payment is being received for that, and that there are all kinds of definitions and types of payments they can receive once that determination can be made.

But in point of fact, we have long since moved away from that type of process. What we are involved in is a piece of legislation that says, "You are entitled to money if the following criteria are met and this board makes this determination." Whether that has anything to do with what took place in the workplace or whether it is an accident as lay people would think about an accident, is now, by and large, irrelevant. That is a bit academic, but if we are going to have any legitimacy to the legislation so that employers can really feel that what they are financing is a process they should be responsible for, you have to give them the opportunity to be able to argue about that.

I can only give you one example in my experience that might point to the direction I am coming from. There is a recurring problem of individuals who are about to retire from the workplace making claims for back problems. There is usually no question that there is a back problem evident, but what you will end up with in a number of industries is a fully financed pension plan: The employee will retire, receive full total temporary benefits and be pensioned off, so long as he works within what are the present guidelines under the system, that is, that he make himself available for work. The intention, from the employer's point of view, was that the individual was taking his retirement, and to continue with all those other workers' compensation benefits on top of a fully funded pension plan just does not make any sense.

That is the type of experience that employers are having, which represents the other end of the spectrum. Most employers recognize there are a good number of claims out there that, for whatever reason, are not properly recognized by the Workers' Compensation Board, and that their employees are not being adequately compensated. But what the employers perceive as abuses are coming from the other end, and to cut them out of the system, which was the initial suggestion in Bill 162—and we are yet unclear as to what role employers are going to have in the appeal rights, under the noneconomic loss—I think is simply bad public relations to begin with; second, it is unfair to employers.

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Mr. Carrothers: So it is a question of whether they would consider it legitimate as compared to whether it would cost more or less. Is that what you are really saying?

Mr. Salisbury: I would hazard to say it, given that I am talking on behalf of the firm rather than any specific employer, but in some senses, knowing what the system is going to cost you is far better than having the uncertainty that the current method of adjudication creates.

Mr. Wiseman: There was another group, Kensington-Bellwoods Community Legal Services, and one of their recommendations to us was that the Workers' Compensation Board must establish a policy manual for internal and external use that cannot be deviated from by any of the board members at any level. They seemed to run into a problem of interpreting it differently or making changes without following the manual.

As a lawyer representing industry, do you find the same frustration? The reason I ask this is because I find it in trying to develop some land where

you are playing by different rules. They have an official plan but they say, "Well, we've got another one in our desk if that one doesn't suit." I know you cannot play by those kinds of rules or it costs you a lot of money.

Do you find that? Would one set of manuals that they must follow be helpful to lawyers on behalf of industry?

Mr. Salisbury: Obviously advocates representing injured workers and representing employers are coming at it from two different directions, but I think the experience is shared that as advocates appearing at the board, quite often you do not know what the hidden policy is. Currently I understand that the Workers' Compensation Board is redrafting all of its policies so that, in fact, the six-volume set that we are familiar with, the green binders, are by and large out of date on a lot of the policies, although there are some updates that are done to that.

I suppose my concern with Mr. Dee's suggestion that if there were simply one policy that everyone knew about and it were consistently adhered to, it would solve the problems, is that unless we have a change in that relationship between the Workers' Compensation Appeals Tribunal and the board, we would still be going through that process at the appeals tribunal where they are, in effect, reviewing the policy to determine whether or not they feel that it is consistent with the act.

My suggestion would be that rather than relying on policy to deal with that problem, you simply come up with a piece of legislation that has more definition so that that interpretation—a problem between the two levels of adjudication—will not exist. Although I do not particularly adopt the argument that this is a board-promulgated piece of legislation, that argument makes sense if the board is now going to be creating regulations which I would assume legally would be unchallengeable by the Workers' Compensation Appeals Tribunal because they would not have jurisdiction to deal with those regulations.

Mr. McGuigan: Thus far we have had a number of people coming and asking for more certainty and more of a sort of a cookbook, I guess, or a recipe, to put it in a layman's manner. It sort of strikes me that if we do that, then we have people coming from both sides of the issue with very technical arguments to try to comply to get a pension and from the other side to try to deny that pension. I wonder if, in the end, justice is really served by that type of situation where you have people on both sides of the spectrum targeting the results.

Mr. Salisbury: I guess my comments are reflective more of a feeling that the entire piece of legislation is in need of a major overhaul. In saying that, I do not think it would be necessary to create a piece of legislation that is going to open the floodgates to very technical arguments. Those floodgates are already open. If the arguments are not already technical enough, people are floundering around trying to determine exactly what policy is in effect today so they can push the right button to get the right answer for whatever side they are representing.

I think it is tragic, quite frankly, that we have a workers' compensation system in Ontario that requires lawyers on both sides to represent the parties. We should have a system in this province that is understandable, so an employer can go in there and effectively present a case, as well as an injured worker. I guess what my comments anticipate is that after Bill 162, I hope we will be getting on to the green paper and looking at

much more significant changes to this legislation.

The Vice-Chairman: Thank you very much, Mr. Salisbury. Next we have the Labour Council of Metropolitan Toronto.

LABOUR COUNCIL OF METROPOLITAN TORONTO AND YORK REGION

Ms. Swarbrick: I am Anne Swarbrick. I am one of the two executive assistants to the president, Linda Torney, and I have to start by bringing the regrets of Sister Torney that she is not able to be here personally this morning.

The Vice-Chairman: We have a half-hour slotted for you; it is up to you to determine how you wish to use that half-hour. You can use it all for your presentation, or a portion of it for that and then an exchange with members of the committee. Welcome to the committee.

Ms. Swarbrick: I guess I would like to start by proceeding through the presentation and I hope it will leave some time for some questions, if there are some questions.

The Labour Council of Metropolitan Toronto and York Region is very pleased to have this opportunity to present our views to the committee. We represent 181,000 working people and their families throughout Metropolitan Toronto and throughout York region. Being a central labour body, those people come from a great variety of occupations: carpenters, office workers, hospital assistants, transit drivers; you name it. We represent people in pretty well every field you can think of.

As a central labour body we do not do case work; therefore, our views will not be including specific cases necessarily. We are basically the municipal equivalent of what the Ontario Federation of Labour is provincially or the Canadian Labour Congress is nationally. Given that workers' compensation is an issue, though, that affects so many of our members and so seriously, we have given it a fair bit of thought and, obviously, are most appreciative of the opportunity to put our views on workers' compensation generally, and on the proposed changes in Bill 162 before you.

If we take a little step of distance in looking at our society, we find that our society is in a constant tug of war between competing interests, between interests that wish to build social programs to ensure that all members of our society enjoy a reasonable share of the wealth and benefits that we produce as a society, and interests that prefer a more laissez-faire society, where people's share of its wealth and benefits is determined more by the struggle for survival of the fittest.

We believe, as a labour council, that a society based on the criteria of trying to best share our wealth and benefits is a society that will most be judged to be a civilized one, and that a society based on the latter dynamic has failed to distinguish itself from the law of the jungle.

We believe that one of the criteria by which a society should be judged is how well it treats those who are injured while working to earn a living for themselves and their families and to do their share to build the wealth of that society.

In 1915, as I am sure this committee is well aware, the Ontario government introduced worker's compensation, partly to afford economic

protection to workers who were injured at work and, to be honest, partly to afford economic protection to employers from legal suits by injured workers.

Since then, unions and community groups have been from time to time successful in achieving some improvements. We believe strongly, though, that if this committee recommends the adoption of Bill 162 in the Legislature, this will be the first time that the clock will have been turned back on workers' compensation in Ontario.

Some of these next figures may have been quoted to you a number of times, but I think they are so significant I would like to do that again. Ontario residents put their lives and their health on the line every day. In Ontario, every working day there is a worker killed on the job. Every working day 1,300 workers are injured seriously enough to miss time at work and to have to file for workers' compensation, for a total of 442,080 workers newly injured each year, or almost 15 per cent of all workers in the province.

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Throughout 1987, 116,384 workers were receiving workers' compensation pensions for having been permanently disabled at work. At 3.8 per cent of our workforce, we do not view that as a small figure; we view that as an extremely high figure. As many as 6,000 Ontario workers die each year from occupational disease, according to the Ministry of Labour's own study, yet the Workers' Compensation Board recognized only 230 fatalities in 1987, including death by both accident and disease.

Those people in our society who oppose our social programs often hide behind the question of the credibility and integrity of these programs. They encourage Canadians to believe that the recipients of these programs are overcompensated and abusing the system.

In reality, in the area of workers' compensation, we believe it is not the program that is being abused; it is the people the program is supposed to be designed to serve who are being abused. They are abused in a number of ways: first, in the workplace when they are injured, often because of the negligence of the employer to ensure adequate preventive measures; second, by the denial of many claims from both accident and industrial diseases; third, by the delays and difficulties experienced by many workers in obtaining badly needed benefits; fourth, by the inadequate level of pension benefits compared to the economic realities that are faced by many injured workers, and by the impact of the work injury on the worker's enjoyment of life 24 hours a day.

Employers point to some examples of what they call overcompensation, where the worker is receiving a permanent pension while perhaps being back at work eight hours a day. What is not understood by people in those cases is that often after putting in that eight hours a day, all the person can do is go home and collapse. Perhaps before the accident, the person could go home and fix his own roof, do his own home repairs, engage in various recreational activities, work on his car, raise vegetables, fruit, flowers, and now can do nothing but go home and collapse exhausted.

We share these thoughts and background with you in support of the tenet we wish to put before you. We believe the Workers' Compensation Act must be geared to making the injured worker whole again, or at least as close to that as is possible to achieve. It is crucial to our view of a civilized society that where a member of that society is injured or diseased in the performance of his duties as a productive member of that society:

1. The worker must have his full income level and benefits protected for as long as it takes for him to be re-employed, including obtaining all increases and benefit improvements to which he would have been entitled had he not been injured on the job. Should the re-employment be to a job that is compensated at a lower level, we believe that workers' compensation benefits should ensure that compensation is supplemented to the level the worker would have been earning had the injury not occurred. That is the only way to keep that worker whole economically.

2. The worker must have the right to all rehabilitation required until he is re-employed in a job at least as satisfying and as well compensated as the one he held at the time of injury.

3. The worker must have the right to reasonable accommodation of his job or work station, as required under the Ontario Human Rights Code for disabled people, in order to facilitate a return to the job where at all possible. Where this proves not to be possible, the worker must have the statutory right to be re-employed by the accident employer in such a way as to not adversely affect the seniority rights of other employees.

We appreciate that many of you with sympathies towards employers will expect that that is a fair economic burden in many cases. It is our opinion, however, that it is that kind of statutory requirement that would be one of the incentives to ensure that employers would take as many steps as possible to protect the health and safety of their employees as much as they would take steps to protect the economic health of their operation.

In putting forward the above concepts, it is clear, I think, that our labour council will be supportive only of legislative change that we believe will improve the protection of the rights and interests of injured workers. We do not appreciate the fact that the Ontario government is advertising and promoting Bill 162 as if it will improve the conditions of Ontario's injured workers. We believe it is this type of 1984 doublespeak, the cynical manipulation of information, that is leading Canadians to look at our politicians with increasing disdain and incredulousness.

We urge the Liberal members of this committee especially and all media representatives to ask themselves this question: If Bill 162 will improve conditions for injured workers, why is it that advocates for injured workers unanimously oppose Bill 162? Unions, injured workers' groups and legal clinics are unanimous in asking not that you amend this bill, but that you withdraw this bill and please start afresh.

The intended bias of this legislation, in our opinion, is obvious from the start. If the legislation was sincerely intended to meet the needs of injured workers, why is it that their organizations were not consulted in the drafting of these changes?

The most glaring problems with Bill 162, in our view, so glaring as to lead us to the conclusion that it must be withdrawn rather than tinkered with, include the following:

Reinstatement and re-employment rights: The concepts of reinstatement and re-employment are crucial. Bill 162 contains so many loopholes and exemptions, however, that the only people who will be assured of reinstatement and re-employment are those who work for particularly good employers already, those employers who would already be conscientious in making room for workers injured while in their employ.

Stated exemptions include over 30 per cent of the workforce: the construction industry, the many employers with fewer than 20 workers, workers who have already been injured, employees of employers yet to be designated by regulation—who knows who they are—and all employees with under one year of service.

It is this last exemption about which we particularly have a question in our minds. We have to ask, is it designed to encourage employers to put new employees in the most dangerous jobs? Because that certainly will be its effect. Why should there be a distinction in the restitution to a worker injured in his first year on the job? Does the Liberal government also believe that people can be a little bit pregnant? They both seem to make about as much sense.

Since this selective privilege applies only until the earlier of (a) two years after the accident or (b) one year after the worker is available for employment, it excludes workers who are most seriously disabled and consequently need more than two years to recover from their injuries.

Where the worker is unable to perform the duties of his or her former position, the employer could use the requirement to offer "suitable employment that may become available" as a means of denying reinstatement by forcing the worker to wait for the right kind of job rather than adapting an existing one, as would be required for disabled people under the Human Rights Code. Workers injured on the job have less protection than disabled workers are afforded under the Human Rights Code.

In our view, injured workers, like other disabled people, must be accorded the right for "reasonable accommodation" in the workplace to allow them actual reinstatement opportunity, with proactive efforts being made by the Workers' Compensation Board to expand the vision of employers as to how this can be done.

Reinstatement provisions must also take seniority rights into account. We realize that too few people understand the rationale behind seniority rights. A main consideration of seniority rights is that, as workers age, we are not able to move as fast or to do as heavy work as we could when we were younger—and I think all of us around this table are increasingly aware of that ourselves—sometimes because of the small injuries, the back strains, etc., that have occurred on the job over the years. The seniority system is one that unions have devised to recognize the accrual of equity on the job, including active recognition to the system called "ageing."

Where a worker is fortunate enough to be reinstated under the provisions of Bill 162, perhaps because the union has fought successfully to convince the employer that it must do so or because one of your offices has intervened, Bill 162 will allow the employer still to get rid of the employer after six months and to replace the injured worker with a new one, with a new and able body to whom the employer will have no obligation whatsoever through a full 12 months.

These reinstatement and re-employment provisions do provide the Ontario government, it seems, with a lovely flag to hold out to the Ontario public at this point in time. It is a flag, however, that is likely to disintegrate as soon as an injured worker attempts to wave it.

Vocational rehabilitation. The Ontario government commissioned a lengthy, costly and in fact excellent report on rehabilitation, the Majesky-Minna report. Yet soon after that report was made, the same government introduced legislation on the subject area studied which ignores the changes advocated in that report.

Injured workers deserve the right to rehabilitation. Bill 162 contains no such right. The legislation provides a right to vocational assessment but does not direct the board to provide services to the worker even if the assessment shows the need for them. The legislation provides a right to early contact and it says that the board must provide a program, but only where the board thinks it should. The board is left with full discretion to deny rehabilitative services.

Any improvements in the wording of section 54a dealing with rehabilitation services are made meaningless by the provision that they apply only to workers who are on temporary benefits. Temporary benefits are available until a permanent disability is identified or up until a maximum of 18 months' duration. This means that vocational rehabilitation services such as assessments, upgrading, training, job search assistance and workplace modifications are available for a period of only 18 months after the accident. So where a worker is injured so severely as to be unable to use those rehabilitation services in the first 18 months or where a worker has an injury that is readily apparent as a permanent disability, he or she will not be entitled by law to use the rehabilitation services.

This is one of the provisions that will result in people increasingly being forced into the care of social welfare agencies over time, rather than being provided with the support to which they should be entitled through workers' compensation.

We urge the members of this committee to call on the government to withdraw Bill 162 and to implement the recommendations of the Majesky-Minna task force on rehabilitation.

Compensation payments: There are a number of specific comments to make in this area.

(A) Bill 162 gives the provincial government the mechanisms for lowering benefit payments to injured workers while simultaneously blaming the victim for his economic problems. The government will claim that the permanently disabled worker or the worker disabled for more than 12 months is fully compensated for his wage loss resulting from injury, while still leaving the injured worker with the burden of responsibility for finding a new job in what may be a difficult job market.

The wage-loss payment will be based on the wages of the job that the board thinks the injured worker could perform, whether or not he can actually find such a job. For example, if the board deems that a worker is able to earn \$1,800 per month and his pre-accident salary was \$2,200 per month, the worker, although still unemployed, would have his benefit for wage loss reduced to \$360, being 90 per cent of the difference. That the worker cannot find such a job would be irrelevant, as long as the board has deemed that the salary of \$1,800 is possible. The job may simply not exist or exist in the area in which the worker lives.

This deeming of wage loss will, first, leave injured workers in a terrible financial position, likely forcing them on to welfare, and, second,

add great insult to injury by adding an element of self-blame and guilt which human beings normally assume when we have difficulty obtaining employment. It is the same kind of self-blame and guilt that people who find themselves in lengthy unemployment situations encounter.

It is employment that gives most of us our sense of self-worth. Increasing numbers of injured workers will be reluctant to step forward to complain about their plight because the government will have individualized their problem and immobilized them with self-blame and self-doubt and led their families and friends to wonder, "Well, are they really trying hard enough?"

It is reasonable to assume that the consequences of increased stress will be displayed in individuals caught in this hellish situation, consequences up to and including strokes, heart attacks, alcohol and drug abuse, even suicide. All of the above are well-documented dynamics that exist among people who are unemployed for a period of time under our unemployment insurance system.

It is cruel and cynical of a government to devise a system that will inflict these compounding injustices on people who are injured in Ontario workplaces, often in workplaces that are kept negligently unsafe by scrimping employers.

The so-called wage-loss provision is not even guaranteed a duration. The government says it will be maintained until age 65 if the wage loss still exists five years after the accident and then will convert it to a retirement payment. The legislation, however, only says that the payment will be made up to age 65 "as the board considers appropriate." So it certainly leaves things up to increasing pressures for the board to decide that it is less and less appropriate.

(B) The retirement payment will be based on 10 per cent of the value of the wage-loss payments, and since the wage-loss payments are very uncertain, the retirement income will be equally uncertain.

(C) One of the many aspects of Bill 162 that reminds workers' compensation advocates of the extremely limited American models of legislation is the provision that the Workers' Compensation Board will now terminate temporary benefits one year to one and a half years after the accident with no regard to the injured worker's actual medical condition.

(D) The loss of enjoyment of life is an essential factor in compensating workers for the impact of workplace injuries. Workers' lives involve more than eight hours for which they are paid five days each week. They include seven 24-hour days where injury frequently results in damage to family life, to friendships, to the ability to perform needed home repair and upkeep, auto repair and home improvement, and to engage in enjoyable hobbies and sports, etc.

The loss-of-enjoyment-of-life lump sum payment is not an additional benefit for injured workers since the effect of the legislation will be to drastically reduce Workers' Compensation Board costs by abolishing pensions. The maximum lump sum payment of \$65,000 would be paid only to the 25-year-old worker who has been rendered totally and permanently disabled. The actual payment will be based on a new meat chart of injuries, with \$1,000 deducted for every year over 45 years of age.

I give a couple of examples. Since I am running short on time, I will not read the examples out loud, but they clearly show the drastic reduction that people will be facing of anywhere from \$213 a month to \$37.61 a month. Another example: \$322 a month down to \$34 a month. In practice, most workers will receive no more than a paltry \$50 a month.

This practice of deciding that a worker is worth a certain number of dollars based on his age and that the dollar value goes up or down depending on his age also seems to be a clear violation of human rights based on age discrimination.

Finally, in the area of benefits, company benefits such as the Ontario health insurance plan, dental plans and health care plans will no longer be included in the calculation for compensation rates; instead, companies will only be required to continue these benefits for one year after the accident.

Advocates for injured workers have long been drawing attention, as I am sure you are aware, to the need for improvement to lifetime pensions. These changes, however, as I have tried to outline, all amount to cutbacks. They have been devised to pass the blame for injustice from the system to the individual and to disempower individuals and their advocates from seeking redress from the system.

These changes in compensation payments must be loudly denounced by any caring member of this provincial parliament, obviously starting with the people in this room.

In conclusion, the Labour Council of Metropolitan Toronto and York region appeals to the members of this committee to add your voices to the voices of the friends of Ontario's injured workers in calling for, first, the withdrawal of Bill 162; second, the implementation of the recommendations of Majesky and Minna of the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board; third, the introduction of truly improved lifetime pensions following input from unions and from the other advocates for injured workers; and fourth, the reduction of workplace accidents by improved health and safety enforcement and preventive measures in the first place.

Thank you very much for this opportunity.

Mr. Chairman: Thank you, Ms. Swarbrick, for a very eloquent brief. Mr. Lipsett has a question.

Mr. Lipsett: On page 5, under reinstatement provisions, you suggest that Bill 162 will allow the employer to get rid of a worker after six months. If you suggest sort of an unending guarantee for an injured worker, and also in the paragraph above you take the seniority rights into account, in the case of a layoff, should this person have a greater job guarantee than the seniority provisions?

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Ms. Swarbrick: I would suggest that in the case of a layoff then the person would be on the list according to a normal list within the seniority system and therefore there probably should be no distortion, by extension, by layoff.

In a case of the actual dynamics of detail, though, that is where I

really would suggest that people need to sit down with the people who do the case work day to day from the unions themselves to deal with that in terms of setting up a system. Being from a central labour body, I do not think I am in a position to deal with some of the detailed dynamics of what would happen, but certainly people should fit in with the normal seniority list.

Mr. Lipsett: What do you suggest is the proper solution for reinstatement?

Ms. Swarbrick: I think the main thing at this point is to point out that you cannot just say they are guaranteed protection for six months, because that just creates too easy a loophole for employers to say, "Okay, fine, we'll take the pressure off by putting them back somewhere in the workplace for a six-month period," and then they could be just totally out of the door right after that.

Mr. Carrothers: I do not believe that is what the section says, if I could interject. It is creating a reverse presumption, and I am not sure that you can take a presumption that the person has been laid off improperly in the first six months, which is what the section says, and expand that to say the guarantee is only six months. You are forgetting all of the other guarantees, the wrongful dismissal and other rights that exist and will continue to exist for that employee.

All you have really stated in this section, as I read it, is that in the first six months an employer will be deemed, or have a presumption, and have to prove that he did not lay off improperly. After the six months, the employee would have the same rights as any other and the employer would have to treat that employee the same as any other employee. They would have to have cause.

Ms. Swarbrick: So why not continue the presumption on the employer that if it is an injured worker--

Mr. Carrothers: I think Mr. Lipsett made the point that you would then run the possibility--and maybe it could be eight or nine months; maybe we could debate the time frame--but by guaranteeing employment or keeping that reverse presumption for an injured worker, you are actually then putting him in a better position than any other worker because he now has a stronger right to employment than the rest of the workforce. Somehow you have to find a balance.

Ms. Swarbrick: But it seems to me, as you are saying, that if all you are continuing is the reverse assumption being put on the employer to have to show that he is not letting the person go because he is an injured worker, then that is really not giving that person any added protection compared to anybody else. The employer just has to show that there is some kind of real reason and it is not because it is an injured worker.

Mr. Carrothers: But he is presumed to be guilty. The onus is reversed. It is a pretty strong protection in the first six months, because a normal employee would have to demonstrate that the employer acted improperly. In this case, the employer now has to show he acted properly, which is a complete reversal of what would normally be the case for every other employee in that workforce.

Ms. Swarbrick: Maybe there is reason, though, to give that protection in that case.

Mr. Carrothers: Yes, but you cut it off. That is what I am saying. We can argue if it is 6, 8, 9 or 12, but there is a point where you say, "No, that worker is now the same as any other."

Ms. Swarbrick: Six months does seem like an awfully short period of time.

Mr. Carrothers: So you make it seven or eight, but I think the principle is that you cannot guarantee for ever.

Mr. Wildman: Frankly, I do not understand why, if the injured worker is properly rehabilitated, as he or she should be, and retrained, there should not be a guarantee that as long as he is in employment by a certain firm, he would continue to be employed and be productive. If there were a layoff, then they are in the same boat as everybody else.

I am wondering on two matters, Ms. Swarbrick. Do you think that if the workers' compensation system worked as it is supposed to under the present act, where injured workers are given the benefit of the doubt, we would have the kinds of problems that have been brought before this committee repeatedly by representatives of injured workers and labour?

Ms. Swarbrick: I think you may be asking for something beyond what I am able to deal with, since we do not deal with case work day to day. Basically, we deal with the concepts and the protections and what have you generally.

Mr. Wildman: What I am basically saying is, do you think the system works to benefit injured workers now?

Ms. Swarbrick: Not nearly as much as it needs to, no.

Mr. Wildman: Okay. The other thing that I think is really important in your brief—and I agree with the chairman, it is very eloquent—is that you make the point that advocates for injured workers, whether they be injured workers' representatives themselves or members of the bar or members of the labour movement, unanimously have asked for this bill to be withdrawn.

To your knowledge, were labour or members of injured workers' organizations consulted by the government prior to the drafting of this legislation?

Ms. Swarbrick: Definitely not, to my knowledge. In fact, that is one of the complaints that I have heard often, that our voices have not been requested and that if in fact the government is serious at trying to deal with what the needs are of injured workers, then one has to ask the common-sense question, "Why would they not go to the advocates for injured workers and ask them?"

Perhaps getting back to your last question too, obviously the present system is not working either and needs further improvements, because repeatedly advocates for injured workers have been calling for improvements to it. I know each year when we organize a day-of-mourning event in this city, we certainly end up with a good turnout from representatives of injured workers because of the fact that they have faced constant problems with the Workers' Compensation Board.

Mr. Chairman: Ms. Swarbrick, thanks again for your presentation. It

was a very interesting and a very thoughtful brief. We appreciate it.

Ms. Swarbrick: Thank you.

Mr. Chairman: That completes the committee's business for this morning. We commence again at two o'clock, when the Employers' Council on Workers' Compensation, which is a very significant umbrella group, will be making its presentation. That is at two o'clock sharp.

The committee recessed at 12:07 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

TUESDAY, MARCH 21, 1989

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Employers' Council on Workers' Compensation:

Yarrow, James J., Chairman

Blogg, John, Manager, Labour Relations, Ontario Mining Association

Liversidge, L. A., Adviser

From the Canadian Paperworkers Union:

Foucalt, André, National Representative

From the United Food and Commercial Workers International Union, Local 278:

Penner, Scott

Atkinson, Brook, Local 1977

From the National Congress of Italian Canadians, Toronto District:

Grande, Gregory, President

Petricone, Ivana, Volunteer Lawyer, Rexdale Community Information and Legal Services

Pileggi, Tony, Board Member

From the Ontario Liquor Board Employees' Union:

Stevens, John, Staff Representative

From the United Steelworkers of America, Local 2514:

Halladay, Don, President

Young, Bernie

From the Canadian Auto Workers, Local 1915 and Peel and Area Council:

Ouellette, Ken, President, Local 1535 and National Executive Board Member

Lucas, Gary, Benefits Representative, Local 1915

Wilski, Chris, Benefits Representative

Crocker, Jim, Workers' Compensation Board Co-ordinator

From the Canadian Union of Public Employees, Local 114:

Kirkby, Jack, Representative

White, Jack, National Representative, Ontario Regional Office

AFTERNOON SITTING

The committee resumed at 2:03 p.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT (continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order as we continue the process of holding public hearings on Bill 162, An Act to amend the Workers' Compensation Act.

We have a full agenda before us this afternoon and I see a hand in the air already.

Miss Martel: Before you begin, Mr. Chairman, there is a motion that we would like to move. I have made copies for each member of the committee. I would like to deal with that now if we can, even though we do have a full schedule. I would like to read it into the record before I make some comments on it.

I move that the committee direct the clerk to reschedule public hearings on Bill 162 while the House is in session in the spring of 1989 in order that all individuals and groups from across the province who properly applied for standing prior to the deadline for submissions and who wish to appear before the committee in Toronto are given the opportunity to make their verbal presentations on Bill 162 to the committee and, further, that the committee pay the necessary travel and accommodation expenses of the presenters from any communities in excess of 50 kilometres from the city of Toronto.

Mr. Chairman: Miss Martel has served a notice of motion, which would imply that you do not wish to deal with it at this point. The motion, because it talks about "while the House is in session" and deals with a new matter concerning payment of travel and accommodation, I would rule in order. When is it your wish to deal with the motion in terms of debate and voting on it, if necessary?

Miss Martel: I would like to deal with it as soon as possible. I do not want to hold up the proceedings. I do not know if we have a cancellation this afternoon and we would like to deal with it then or if you want to go ahead now.

Mr. Chairman: We have a cancellation at 4:30 p.m. If it is the wish of the committee to have, I hope even then, a short debate on it at 4:30 p.m., we could deal with it then. Is that what your wish is?

Mrs. Marland: Let's deal with it now.

Mr. Chairman: You wish to deal with it now? Is that the wish of the committee?

Mrs. Sullivan: We do have a full schedule with many interveners who have gone to a great deal of trouble in analysing the act and coming to us with their comments relating to the proposed amendments. In courtesy to the people who are here and who are here according to our schedule that was set up for them, we should proceed. We do have a vacant time at 4:30 p.m., and I

think we can deal with this motion at that time, along with Miss Martel's debating points on the issue.

Mr. Chairman: You have heard the position taken by the government member. It is a motion, because Miss Martel said, "I move that." It is definitely a motion and it is in order. It would expedite the work of the committee if it could be held off till 4:30 p.m. so we could proceed with this first presentation. However, because it is a legitimate motion, if the mover wants it dealt with now, we will.

Miss Martel: I think we can be brief.

Mr. Chairman: All right. Miss Martel, do you wish to speak to your motion?

Miss Martel: Very quickly, Mr. Chairman. Members of the committee will recall that in Ottawa two weeks ago there was quite a debate from committee members on extending the hearings, etc. The suggestion was made by the government side—in fact, it was made twice—that we could sit while the House was in session in order to hear all those groups who are on a wait list. As that debate proceeded, we argued that that would be difficult for people who are outside of Toronto and the government side again suggested that we could look at the possibility of financing the trips of those who would have to come to Toronto, that it had been done in other committees of this House.

Therefore, we considered this and decided that my colleague and I would move this motion to allow presenters to appear. We all know there are some 612 people, groups and individuals who requested standing under the present schedule. Even with the 18 this week, we will not hear about 300 of those groups of people. It is our opinion that this bill is so important that all those groups who are interested in making verbal presentations—and I stress verbal not written—should be allowed to appear before the committee.

I also stress that when we had this debate, we were not talking about written presentations when the offer was made by the government side, but in fact the offer quite clearly said we could have all the groups before us here in Metropolitan Toronto when the House was in session.

We have also included the fact that the committee should pay for this necessary travel. I did check with my House leader earlier this morning and he confirmed with me that on Bill 30 the standing committee on social development did pay for presenters who came to Toronto in order to appear before the committee. We are not setting a precedent and this committee could certainly look at increasing a budget or putting a budget together to be presented to the House leaders in the new session when this budget is finished.

I think it is a good motion. It was an offer that was suggested twice by the government side and I think all members should support it.

Mr. Chairman: Mr. Wildman, on the same motion.

Mr. Wildman: If you have someone who wishes to speak against, I would be willing to yield my place.

Mr. Chairman: Not at this point. Go ahead.

Mr. Wildman: Okay. As my colleague has indicated, this motion is put by the New Democrats on the committee in reaction to the debate that took

place during our Ottawa sessions. At that time, Mr. McGuigan indicated that the government party was prepared to consider extending the sessions of the committee during the next House session and indicated that the only reason that was not taking place was because opposition party members did not want it to. We considered very carefully what he had said and decided it did make sense to extend the hearings during the House session, even though normally it is not the practice to have hearings while the House is in session.

1410

This bill is so important to the future of injured workers, to the labour movement and to employers in this province, because of its effects on the worker's compensation system, that we believe all groups that properly made submission to appear before the committee prior to the deadline should be given the opportunity to do so. As my colleague indicated, we are only going to be hearing half of the more than 600 individuals and groups who indicated that they wanted to present.

I want to say, as a member of this committee, that I object very strongly to the method we have chosen as a committee to decide who should have standing and who should not from these 612 groups and individuals. Frankly, it is just a matter of the luck of the draw: We put the names in a hat and we draw the names out. There is no rhyme or reason as to which group should appear and which should not.

I object strenuously to that sort of method for deciding who should have the opportunity to make verbal presentations to a committee of this Legislature. The luck of the draw is simply not acceptable. In every location we have been there have been demonstrations by groups who have been denied standing and who properly got their names in before the deadline.

Obviously, if we are going to have hearings in Toronto, this is going to be an onerous expense, particularly for injured workers if travelling from locations such as Sudbury, Elliot Lake, Ottawa, Windsor or wherever to Toronto to appear before the committee. For that reason, I believe the committee should pay for the travel and accommodation expenses of presenters from communities a distance from Toronto. Considering that this is in line with the proposal made by a member of the Liberal Party during our sessions in Ottawa, I hope we will pass this unanimously.

Mr. McGuigan: It is true I did mention that the offer had been made and stood, but at no time did I make any commitment towards travel and accommodation expenses. I did remark that it was not unknown, because obviously it has happened in other cases, but I did not make that offer or that commitment to pay travel expenses.

Mrs. Marland: We support this motion. It is not easy to keep repeating the blatant facts about workers' compensation in Ontario today, because it is something that anyone who is alive in Ontario in 1989 already knows. Workers' compensation is not working for anyone today. It is a mess. It is hurtling very rapidly into bankruptcy. It does not work for the employers and does not work for the employees who unfortunately are injured.

Therefore, if there is going to be new legislation in Ontario today, it has to be legislation that will remedy, at least in part, some of the problems with compensation for injured workers and the cost of that being provided by the employer.

If this bill is as badly drafted as we are hearing—from both sides, I

may add; not all of the employers are even mildly thrilled by the legislation before this committee—it seems obvious that if the ministry is not willing to withdraw the bill, it is, I would hope, interested and willing to have some amendments. But even the amendment process is one that is beyond the control of anyone, let's face it, other than the government because we have six government members on this committee and four opposition members.

Therefore, we are in a position where we are spending money travelling around this province trying to get input from the public. If this Liberal government is sincere in listening to that input, then it would not want to limit it. I think what begs the question here is the fact that there is a limitation being put on the amount of public comment on a Liberal government bill. That speaks for itself that the Liberal government perhaps is not as interested as it would like to pretend it is.

I know that when we have discussed this motion previously in this committee in the last two and three weeks, the comment that has been made by the Liberal members is that we were taking up the valuable time of our deputations, as we are right at this moment. The criticism has been that we should not be doing that.

The truth of the matter is that I would be willing to wager any amount that those making deputations who are here in this room at this moment would be happy to have the privilege and the opportunity of being here today to make presentations extended to as many other groups which are not as fortunate as they are because they are already scheduled on this list.

So yes, we are taking some time right now to try to expand the public hearing process on a piece of legislation which will have tremendous impact on the public. If we are elected to represent the people in Ontario, we had better make sure we do that by listening to them. We cannot go off in some kind of isolation and say, "Well, we're only going to listen to 50 per cent of the people," because that is what we are doing when we look at listening to 300 groups as opposed to the over 600 that have been asked to be heard. We are going to arbitrarily say, "We're going to listen to 50 per cent of you folks; that is all we can afford," but we are willing to travel around the province with 12 or 15, I guess altogether, in the committee.

I recognize as well as anyone else that there is a budget cost to that, but I also recognize, as is in this motion, that there is the cost of bringing those deputations. I would be willing to bet that most of the deputations would not ask for funding in any case because some of them would have their own resources. But for those that did not, if we were willing to agree to fund their appearances in Toronto when the Legislature is sitting, as the motion says, it would be a pittance in terms of the cost that has already been borne by all of the committees of this Legislature which travel this province all the time, ostensibly to take in the opinions of the public.

So in supporting the motion, I think we are going to see probably an opportunity for the Liberal members of this committee to put their money where their mouths are. If their government truly believes in the public, open consultative process of being an open government, and if this bill is so wonderful that they feel that it stands above all criticism and all necessary amendments, then why would they not want to have full, consultative, open hearings? To have those hearings at the time that the Legislature reconvenes obviously makes common sense.

The only question I have with the motion is that I think the word in the

first sentence probably should not be "reschedule" because we are not going to be rescheduling anyone who has already been heard. The intent of the motion is to schedule ongoing public meetings or further or additional public meetings in order that those people who applied legally before the time deadline for appearance and presentation before this committee would have that opportunity.

Just one final comment: I know that one of the Liberal members of this committee said that he would dutifully read all written briefs presented and that there was no limit on written briefs being submitted by those people who could not appear before us in person. However, the written briefs do not give us an opportunity to question those presenters. Thank you.

1420

Mr. Chairman: Perhaps it would be helpful, for those members who have not been on committees for a number of years, just to let the committee know what the traditional practice has been; namely, it is to pay for deputations in unusual circumstances, usually then having only one person per delegation. The groups have had to pay their money up front and then submit receipts to the committee for payment.

Finally, any committee budget we submit to the Board of Internal Economy must be approved by that funding group, not by us. We cannot by ourselves simply set a budget, but if the committee passes this motion, then of course it would be built into it. I assume the clerk would then do an estimate of the cost of such an arrangement, at which point we would submit that budget in the new budget for 1989-90, which has to be submitted shortly anyway, for approval. Of course, any groups that come down must get approval of the committee before they would be invited to come.

I just thought members should know what the tradition is in that regard. I appreciate people being brief because of the delegations before us.

Mr. Wildman: Just a point of clarification on what you said, Mr. Chairman: Any groups that would be considered by the committee would have to be ones, as the motion indicates, that got their names in before the deadline.

Mr. Chairman: I appreciate the brevity of the members.

Mr. Dietsch: This is not a subject matter that I or anyone around this committee room deals lightly with. I think we have to review a little bit of the history of how we got here and what exactly takes place. In fairness, I think we in fact set out the parameters in the committee in its early stages, back at the beginning before committee hearings were held on this bill. There was an agreed amount of time to be used. I believe it was for six weeks that we said we would have public hearings. We decided basically as a committee, and I might add it was agreed to by all three parties, on the number of days the committee would sit and the individual areas where the committee would go.

All those things were dealt with as a constructive method by which we could hear individuals' presentations on this bill, which we undoubtedly consider a very important piece of legislation, but it is not to be mistaken as the end-all answer to all the ills of the WCB. It was always viewed as a step that would be taken—that is why it is going through this public process—and would be followed up by the green paper, which was going to deal with a number of other issues with respect to some of the difficulties the WCB has had over a large number of years, difficulties that perhaps some of my

colleagues here have had the opportunity to sit and listen to for a period of time.

There were a number of recommendations we dealt with as a committee, and we decided on how we were going to go. We dealt with this particular kind of motion, recrafted time and time again, as a method. I am not sure why. If I consider all the time we have spent debating the extension of hearings, we probably could have added an additional—who knows how many?—opportunities for individuals to make presentations to this committee.

I think it is fair to note that it was myself in particular, along with my colleagues, who presented a motion to extend the times for those hearing days here in Toronto, starting earlier and going later. I might add that I have a bit of, I guess, difficulty, recognizing that some individuals have opted to make presentations to this committee, and for whatever reason—I am sure they are all legitimate—have not been able to be here. But we cannot overlook the fact that this has pre-empted other individuals who have been very interested in making a presentation.

I have said time and time again, as the individual has indicated, that I for one, and I am sure all my colleagues around this committee room on both sides of the House, have given due consideration to written submissions in the past and certainly will give good consideration in the future to the content of a written brief as it is presented to us.

I for one, and you corrected me, Mr. Chairman, because of my naïveté felt we could get permission to sit when you expected and had agreed upon your caucus meetings. Quite frankly, as an individual member, I thought this bill was more important than those things you would discuss during that caucus.

Interjections.

Mr. Chairman: Order. Let Mr. Dietsch complete his remarks.

Mr. Dietsch: It is something I told you, Mr. Chairman, and with all due respect you pointed out to me that the history of this House has said this is the way these things go. I appreciate that, because you are a long-standing member. I do not always agree with the things you tell me, but certainly I take them all under serious consideration.

I want to say that I do not want to turn off or pre-empt anyone from his input into this bill. I have said it before. I mentioned it to a lawyer who was in the room this morning. Quite frankly, my comprehension and understanding of English are probably equally as good as that of that legal individual who was put forward. I take that as a very serious commitment.

If you just take it back in the history of this—I do not intend to drag it out; I would have preferred, and I pointed this out at the very beginning, dealing with this at 4:30 p.m., and I do not want to grind it back over again either—you will recall, very succinctly I am sure, that we wanted to have those public hearings when this House was sitting.

You had in those early days 1,001 reasons why we could not do all that, all that difficulty you were having about going back up to the House and coming back down. I took those remarks seriously. You will recall that in subcommittee I recognized that and agreed. I do not know where you get the

time to do it now on this bill. More particularly, in terms of outlining some of the costs, I just cannot find myself supporting this type of move again.

However, I am more than willing, if you want to talk to your caucuses, to extend it during those times of those caucus retreats and extend a couple of days in there when this House is down; no problem at all. I think I have made that offer perfectly clear before. I guess I get somewhat frustrated---

Interjection.

Mr. Dietsch: I thought I heard something. I get somewhat frustrated in terms of trying to recognize---my good friend Mr. White was before me a number of times. I know how thorough the unions have been. I know how thorough the umbrella groups, the labour groups over those unions, have been in terms of making presentations. I know that and feel confident they have not missed very many points, if any. I highly doubt whether they have missed any in their presentations, which have been excellent presentations.

You will find, and there have been comments made on it, that the Liberal members are not making commitments for amendments, etc., because the Liberal members in this committee are very sincere about hearing all the presentations before us before we make any commitments on those clause-by-clause areas. If the members wish, as I say, they can ask their House leaders to consider that. You pointed out, Mr. Chairman, that in the standing orders that is an impossibility. I do not know how this interfaces with the standing orders, then, but I do hope this is the last time we are going to deal with this kind of item.

1430

Mr. Chairman: I have one more speaker on the list. Mr. Wiseman.

Mr. Wiseman: I will not take much time. I support the motion. I know there are some fairminded people on the government side. This is not going to go away. As we see people, a lot of people back in my riding have said they would have liked to get on our list but did not make the list. Some of them were in on time and some were not.

If we are serious that it is a serious bill, as Mike Dietsch has mentioned, two or three months' sitting in the spring is not going to make that much difference in our time, but it could make an awful lot of difference to the people who are making the presentations. Maybe we will hear all that is said three or four times over, but maybe that is what it takes to drive home the point they are trying to make, that certain parts of the legislation need to be improved.

I hope the Liberal members will consider voting for this motion. Let's get on with what we are here to do and spend the time this spring so that when the bill comes out, both the workers and the people representing industry will feel they have had their kick at the cat and will then be able to blame whomever for not bringing in the amendments or changes they would like to see. I hope you reconsider and vote for it. I have known some of you longer than others, but I know some of you are fairminded and want to do the right thing, so I hope you go against party lines and vote for this.

Mr. McGuigan: As the motion is presently constituted, I cannot vote

for it, because I had no authority to offer payment nor did I offer payment in my original remarks. As it is presently constituted, I cannot vote for it.

Mr. Chairman: Is the committee ready to vote?

Mrs. Marland: Would you like to split the motion?.

Mr. Chairman: Order, please. We have a motion before the committee. Does everyone understand the motion? Do you need it read again? No.

Mrs. Marland: Can we have a recorded vote?

Mr. Chairman: There has been a request for a recorded vote.

The committee divided on Miss Martel's motion, which was negatived on the following vote:

Ayes

Marland, Martel, Wildman, Wiseman.

Nays

Carrothers, Dietsch, Lipsett, McGuigan, Stoner, Sullivan.

Ayes 4; nays 6.

Mr. Chairman: We shall now move on to the presentation from the Employers' Council on Workers' Compensation. I apologize for the delay. On the other hand, I am sure you got a view of the workings of the assembly and one of its committees that very few people in the province have had the opportunity to do. We are pleased you are here this afternoon and we look forward to your presentation.

EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

Mr. Yarrow: I would like to introduce the delegation with me. On my immediate right is Elizabeth Dods, CCOHN, which stands for Canadian certified occupational health nurse, and she is president of EmployeeCare Ltd., occupational health services. To my left is Les Liversidge, adviser to the ECWC, and to my far left, John Blogg, who is manager of labour relations of the Ontario Mining Association.

You have our presentation before you. We intend to read that presentation into the record. However, as you go through the pages, you will see insets. We have no intention of referring to those; they are background information for you. Of course, the additional information, starting with the letter A at the back, we will not be referring to per se; these are the appendices to our presentation.

Mr. Chairman: I think you pretty well understand the rules, that you have a half-hour to use as you see fit.

Mr. Yarrow: I intend to read rather quickly in order to get it all into the record, and then if we can answer some questions we will be pleased to do so.

The Employers' Council on Workers' Compensation is a broadly based

coalition of 20 industry and trade associations, along with corporate and technical expert members representing the majority of employers in the province of Ontario. Established in 1983, the employers' council was created as a coalition of trade associations at a time when the employer community recognized the benefit of joint action on the Ontario workers' compensation system.

Since its inception, the ECWC has made a valuable contribution to the ongoing evaluation and reform of workers' compensation. Part of the ECWC's efforts has been to establish a consensus among the wide variety of industrial sectors in order to present a common position for employers in the ongoing evaluation of the workers' compensation system and throughout the policymaking process. The membership of the ECWC views Bill 162 as one of the most significant developments of workers' compensation reform in the last decade. We are pleased to appear before this standing committee to offer our perspective.

In June 1988, the government introduced sweeping amendments to the workers' compensation system through Bill 162. These amendments are the culmination of years of study and political process beginning in 1980 with the release of a report from Harvard law professor Paul C. Weiler. These proposed amendments, which offer the most significant and far-reaching reform of the workers' compensation system in its entire history, have proven to be controversial.

Critics of the bill have been numerous and have been vocal in their condemnation. The Employers' Council on Workers' Compensation, while not uncritical, generally supports the principles of the bill. When considering any legislative reform of workers' compensation, though, it is essential to consider the financial sustainability of the workers' compensation system. While this will not be the focus of this submission, the ECWC has previously presented an overview of the current state of workers' compensation in Ontario. A copy of this submission was presented to this standing committee in 1988 and is attached as appendix A.

The ECWC is under no illusion that Bill 162 will produce any cost reduction in the system. In fact, studies commissioned by the council have shown the opposite. Bill 162 will actually increase workers' compensation costs. Reference is made to appendix B. The employers' council is of the view that in the long term, system sustainability and affordability will flow from more effective rehabilitation of injured workers. It is on the strength of a more equitable system, coupled with a higher ability to rehabilitate, that the ECWC offers its support to the principles of Bill 162.

The ECWC has submitted to the government a comprehensive legal analysis of the provisions of Bill 162 and appends this submission with that report, appendix C. We encourage the committee to study that report and our recommendations, the majority of which we will not be able to review in detail today due to the time restrictions.

Why does the ECWC support the dual award system? Reform on the method and the mechanism to compensate for permanent impairment arising from industrial injury is one of the most complicated, complex and contentious issues facing any workers' compensation system, yet it is how the system deals with the seriously disabled on a long-term basis that ultimately determines the integrity of the process itself.

The dual award system represents a fundamental revision of the method of

compensating for permanent disability or impairment. Compensation for loss of future earnings is a worker-specific pension payable for income replacement purposes. This calculation represents an advance on the "average justice" award system that is presently in place.

Why reform? Quite simply, the current approach to permanent disability compensation simply does not work. Workers have rigorously opposed the present system, condemning it as an insensitive meat chart approach. Equally, employers have been unsupportive, seeing a system that generally overcompensates the majority at the expense of the seriously disabled minority. Not only is the present system unfair, but benefits for permanently disabled workers are the most expensive portion of the workers' compensation program. Moreover, the basic inequity of the system fuels review after review and appeal after appeal, clogging up the system. The inequity and unfairness inherent to the present system simply cannot be allowed to continue any longer.

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The present system attempts to provide one payment delivery mechanism to compensate for two disabilities arising out of a work injury. While the current system is administratively simple, the administrative advantages are achieved at the sacrifice of the major substantive goal of a workers' compensation program; that is, a replacement of earnings lost as a result of injury. Figure 5 illustrates the point.

Very simply, a wage loss pension is attempting to bridge the gap between what the worker would have earned but for the injury, and what the worker is actually capable of earning. If the present system closes that gap, it does so simply by sheer luck. The current clinical rating system is an outdated blunt instrument attempting to resolve a very sophisticated and complicated problem.

The noneconomic award concept is new to the workers' compensation system in Ontario. Contrary to some criticism, the implementation of the dual award system will not result in the undercompensation of anyone. It will result in just compensation for everyone. The most common statement made in criticism of Bill 162 is that the relatively small lump sum payments replace the current type of permanent pension, thereby resulting in a cash savings to the system and to the employers. This is simply untrue. The noneconomic award introduces a new benefit which has not been available to date under the present system. All workers who suffer a permanent impairment will have entitlement to this type of award.

The awards are not tied to income, but are based upon a formula which has as its only variables the age of the worker and the degree of impairment. The determination of the degree of impairment will be made by a medical assessment with the assistance of a rating schedule. We have recommendations. While the Employers' Council on Workers' Compensation supports the implementation of a noneconomic payment, we do offer these.

1. Clarify the roles of the medical practitioner and the Workers' Compensation Board in determining the percentage of a noneconomic award.

2. Reconsider the merit of referring clinical ratings to outside physicians. It is the position of the council that in turning to external practitioners, the government may surrender the expertise and consistency which the present team of compensation specialists brings to the permanent disability rating program.

3. Amend subsection 45(5) to ensure that the medical practitioner will be conducting a true clinical assessment and will not be required to speculate about future possibilities.

4. Introduce an amendment to recognize that a request for reconsideration by an employer under subsection 45(8) will create an issue in dispute within the meaning of section 77 of the act.

5. Reaffirm the original review process limiting access to the Workers' Compensation Appeals Tribunal for review of the noneconomic award.

The current life award system in general over- or undercompensates permanently injured workers. The Minister of Labour (Mr. Sorbara), when introducing Bill 162, advised that over 17 per cent of all present pensioners are undercompensated. Bill 162 bases the earnings loss award on a projection of earnings capacity rather than providing for an ongoing monitoring of the worker's income. The intent is to provide pensions which will correspond more closely with the worker's actual wage loss than does a pension estimated from a clinical rating.

The bill does this through a requirement to compensate for the future loss of earnings arising from an injury. The council is of the view that the phrase "future loss" is simply too broad and places a requirement on the board to speculate about future possibilities, however tenuous.

The bill equates temporary disability to a period of 12 months' duration only, with payments after 12 months being handled under the wage loss award concept. It does not address the major distinction between temporarily and permanently disabled workers. The temporarily disabled individual is in the throes of change both from a medical and vocational rehabilitation perspective, whereas the permanently disabled worker has reached maximum medical improvement, such that the disabling condition has effectively stabilized.

It is the position of the council that no worker should be considered for an earnings loss benefit until the board has determined that the disability will indeed be permanent. Doing otherwise places the temporarily disabled worker in a benefit program which is essentially intended for long-term disability compensation to compensate for long-term losses.

The council strongly recommends that a different review schedule be developed for the temporarily disabled worker. Changes will be occurring on an ongoing basis and their impact on earning capacity must be monitored more closely.

Recommendations:

1. That wage-loss benefits be paid only to workers who are determined to be permanently disabled.

2. In the alternative, temporarily disabled workers should be required to submit to quarterly reviews.

3. The earnings-loss benefit should be calculated on the basis of quantifiable losses which can be assessed on the basis of current information. Speculation about uncertain future possibilities should not enter into the calculation.

4. The earnings-loss benefit should not be used to protect the worker against fluctuations in the labour market.

5. The factors considered by the board in determining the quantum of the earnings-loss benefit should be expanded to include private disability benefits, if any, received by the worker, the prospect for reinstatement of the worker under Bill 162 and the worker's participation in rehabilitation.

6. Payment of the earnings-loss supplement should be conditional on not only the worker's participation in rehabilitation, but also his availability for employment.

7. The board should be given exclusive jurisdiction to make determinations related to earnings-loss benefits.

We raise the question, is the dual-award system fairer? The debate on the implementation of a dual system in Ontario has again proven to be controversial. The council encourages the committee to look to the integrity of the intended process itself and to ask this simple question, "Is a dual-award system a fairer mechanism of benefit delivery?" We believe it is.

You will need some time later to go over the actual examples of Bill 162 on the next page. I think they will be very illuminating.

Vocational rehabilitation: The legislation has previously been very general with regard to vocational rehabilitation, merely giving the WCB jurisdiction to provide such assistance. Certain obligations are now placed upon the board in those cases where the worker is receiving temporary disability benefits.

The employers' council has an absolute commitment to more effective rehabilitation and supports the objective of upgrading the rehabilitation services available to injured workers. Rehabilitation is an essential component of any strategy to return workers to gainful employment.

The employers' council, however, does have concerns with respect to the applications of the rehabilitation provisions of Bill 162, the schedule for providing rehabilitation services and the absence of worker obligation to participate in rehabilitation.

Moreover, the council is reserved on its opinion of the ability of the system to effectively administer the rehabilitation program and to co-ordinate the active involvement of the worker, the employer and the physician. It is questionable whether the medical profession is equally committed to the principles enunciated by the board in its rehabilitation strategies.

Recommendations:

The rehabilitation assessment must be performed within the first 45 days of absence from work.

An automatic review of the rehabilitation strategy should be conducted if the worker has not returned to work within 6 months from the date of an accident.

The board must be provided with the power to determine whether a

vocational rehabilitation assessment is desirable and to require the worker to participate in such an assessment.

The results of the rehabilitation assessment should be released to both the worker and the employer.

The board must determine whether or not the worker is co-operating in a rehabilitation program to determine entitlement to an earnings-loss benefit.

Mandatory reinstatement: If enacted in its present form, serious problems for employers are created because of unqualified reinstatement obligations.

Recommendations:

Relieve the employer from the obligation where the employer no longer employs persons in the same or similar work as that performed by the worker on the date of injury.

Recognize that a worker's right to return will terminate if he fails to accept the same or similar employment after recovery, is unavailable for employment, experiences an intervening nonoccupational injury which prevents his return or decides to retire.

Recognize that an employer and employees or the bargaining agent representing the employees may negotiate a modified reinstatement procedure, subject to the approval of the Workers' Compensation Board.

Recognize that a reinstated employee may be terminated for cause if he proves to be unable to perform the work.

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While the ECWC is generally supportive of limited reinstatement provisions, we have viewed with interest the point of view presented by the Ontario Human Rights Commission. It is the council's understanding that the human rights commission expressed concern over jurisdictional overlap. The council recommends that the committee review the jurisdictional issue to ensure that a conflict in process and message does not arise.

Of serious concern to the employers' council is the fact that the government has not conducted any economic analysis or impact studies of proposed increases to the earnings ceiling. In the council's submission, such a study is essential before an informed decision can be made on the issue. Support for an increase in the earnings ceiling has generally arisen from a comparison of Ontario's ceiling to other Canadian jurisdictions. This comparison must be performed in the proper context. This council does not take the position that the ceiling should not be adjusted, but it should not be adjusted until the economic impacts are known and have been considered.

Again, I think those charts on the next page should be looked at and the time taken to understand and appreciate them.

Bill 162, the foundation for reform: This council, while supporting the principles detailed in this bill, offers its support cautiously, providing amendments are forthcoming. In its present form, the bill is somewhat flawed and requires revision.

An equal concern flows from the history of workers' compensation administration in this province. We are witness to a system that has displayed difficulty sustaining financial stability in the long term. Delays and bureaucratic obstacles have become commonplace, yet Bill 162 requires even greater administrative precision in order to be successful. While we are hopeful that the recent reorganization within the board will prove to be beneficial, we are still operating only on hope and expectation. The proof is yet to be delivered.

To ensure a higher level of accountability and to create an opportunity for informed reflection, the ECWC recommends an amendment to require a regular review of the workers' compensation process. We recommend that at least every three years a committee consisting of representatives of management, labour and the professions be struck to review the system. This committee would be similar in structure and mandate to the Saskatchewan model. We would recommend that the first review be focused on the effectiveness and overall impacts of Bill 162.

Bill 162 does not promise to be the final solution for the present problems facing the workers' compensation system. It is, though, a much needed starting place, a foundation for reform.

The government is committed to continuing its reform through a green paper which is due out this fall. An external committee representing the interests of labour and management, of which the ECWC is a member, has already been struck to assist in the development of the green paper.

Reform of the workers' compensation system requires sensitivity, courage and a will to change the process for the better. The ECWC strongly recommends passage of Bill 162 with the changes suggested and encourages this committee to set the tone for the future reform of the workers' compensation system in Ontario.

Mr. Chairman: Thank you, Mr. Yarrow. Somebody should be complimented for the very attractive and helpful way in which the report is organized too. It makes it very convenient for members of the committee to go through it.

I have just one brief question before we open it up. On page 14 you recommend that the first review be focused on the effectiveness and overall impacts of Bill 162. I assume by that you mean after the bill has been implemented and passed into law.

Mr. Yarrow: Yes.

Mrs. Marland: Jim, it is good to see you, as always. This is a very impressive presentation and I congratulate the council on it. I have two questions.

I just want to point out one thing that I think is kind of interesting that you might like to look at again. Under tab C, page 19, the recommendation on section 45a is that benefits "be paid only to workers who are determined to be permanently disabled." I think that wording should be changed to "who are assessed to be permanently disabled," because you would not want to be in a position where there is any doubt about the determination.

Does the council believe that most people retire at 65 and then do not go on to do other work? That is not a personal question.

Mr. Yarrow: It is my duty to field questions like this. I do not know who to pass that to.

Mr. Dietsch: The youngest one.

Mr. Yarrow: With a lady present, do I dare do otherwise? I do not know who wants to try to tackle that one.

Mr. Blogg: I am of the opinion that right now, no, people do not retire at 65. There are four members of my family who are over 65 and are still working, in other vocations than what they had throughout most of their lives. I think that is the general opinion of the council. People do not retire at 65 today.

Mr. Yarrow: Very seriously, there is another rationale for this, too. With a large number of employers, where you are talking about two or three employees in a company, they are an integrated unit and sometimes a family unit. Our farm community is a basic one; the mom-and-pop corner stores are another. I do not think there is any thought of a retirement age in those instances.

Mrs. Marland: I agree with you. The fact that we are a far healthier nation than we were is the reason, I think, that people are not stopping work and retiring at 65. Your answer is what I anticipated. Therefore, would the council agree that a permanent disability pension should not stop because somebody has a 65th birthday, whereas if they had not been disabled—

Mr. Yarrow: That was kind of a leading question.

Mrs. Marland: In fairness, if they had not been disabled, they may well have been continuing to work outside of their own retirement pension.

Mr. Yarrow: But there is one very basic thing you must keep in mind. What workers' compensation is supposed to do is replace income. When a person retires, given that there is not any other legislative direction other than age 65 with some companies' policy, it is not presumed that a disability pension should go on for life, if we can use that term, because there are other pensions that come into play. I do not think it was intended to do that. Again, I surrender to your view that people do not necessarily retire at age 65. Some retire at 60 and some, of course, do not retire until much later.

Mrs. Marland: You and I both know very well the case of Barbara Turnbull. When you look at a Barbara Turnbull and recognize what options she might have had as a healthy woman of 65, then I think the arbitrary aspect in this bill becomes clear, saying that once you are 65 your disability does not matter any more, whereas if you were not disabled you may well have gone on to earn a supplementary income. With inflation the way it is, if you are not in an indexed pension situation through your employment, you are penalized if you are disabled and you happen to turn 65, as opposed to your neighbour who is able and maybe can earn another income for 10 years and may need to because of inflation.

Mr. Chairman: I think we have time for one more question.

Mrs. Marland: Just very fast. At page 10, under your recommendations, "The rehabilitation assessment must be performed within the first 45 days of absence from work." Can you tell us how that can be done if the person is in hospital? That is such a strong statement you are making. You

are saying it must be performed. How can you do a rehabilitation assessment if the person is still in hospital?

Mr. Yarrow: We must assume there are exceptions to absolutely every single rule. We are responding to the majority of situations where the person would be available for rehabilitation. Obviously, in the situation you are speaking of, that could very well be an impossibility.

The other thing you must consider, though, given the situation today, with the Ministry of Health's and the various hospitals' predilection to get people back out on the street, somebody who is in hospital for 45 days, other than recuperation from a really traumatic accident, is not likely to be back to work for a very long time, if ever.

Mr. Liversidge: I would just like to add something to that point. It is the type of case where somebody would be in the hospital perhaps 45 days after the date of injury, which would indicate a very severe and serious disability, which would suggest to me that that type of individual would require more extensive rehabilitation services that must start as soon as possible. The focus for the rehabilitation efforts has to start at a very early stage. We have all heard that. That is becoming a very common theme in most submissions.

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The sadness associated with the present way of approaching vocational rehabilitation is that the very type of individual you speak of would be left to go through a medical process, a very much-needed one and a long-term one, of medical rehabilitation over the long term, and only on reaching a point of relative maximal recovery would the system begin to focus in on what is required to put this individual back in the workplace. That will be far more than 45 days beyond the day of injury; it could be 45 months beyond the day of injury.

What we are suggesting is that the rehabilitation assessment process is not necessarily completed at the 45-day mark, but certainly it is initiated no later than that, and in the case of a very seriously impaired individual, the rehabilitation process is going to require a very sophisticated, integrated type of approach. In that very specific instance that you raise, where the injury would be that serious, I frankly think that within a matter of one or two weeks after the date of that serious accident the vocational rehab process would start, concurrent with the medical rehab process.

Mr. Chairman: Mr. Yarrow, I thank you and your colleagues very much for your presentation. The committee appreciates it.

Mr. Wildman: And your patience.

Mr. Chairman: The next presentation is from the Canadian Paperworkers Union. I do not see Don Holder here but I do see André Foucault and friends. Welcome to the committee. Introduce your friends and proceed.

CANADIAN PAPERWORKERS UNION

Mr. Foucault: We have come before you with a slightly different approach from what you just heard. My name is André Foucault. I am with the Canadian Paperworkers Union. Mr. Holder, who was to be here, was unavoidably

detained out of town and I am acting on his behalf as well as that of the union with my two colleagues here.

To my left is Chuck Langley of Local 595, which represents the employees of Domtar corrugated products in Islington. He is also a past president of the Inter-Union Corrugated Council which represents 2,000 people in this province who work in the corrugated sector. To my right is Bob Smart, who is the president of Local 322, which represents the 1,400 employees of Carlton Cards Ltd. here in Toronto.

We come before this committee in distress, anger and frustration. We feel betrayed by a government that has postured itself as more sensitive to the needs and concerns of Ontario's majority, those who work in industry, those who create the wealth and pay the taxes that keep our province vibrant and prosperous. For years we listened to Liberal members in opposition complain to the Conservative government about the inadequacies of Ontario's workers' compensation system. Now we learn that these complaints were insincere and cynical attempts to acquire undeserved electoral support.

Frankly, we are astonished that a government which has legislated broadened human rights protection, made initiatives in pay equity, taken on the medical profession and vigorously opposed the trade deal with the United States should now submit so slavishly to industry's demand for relief from workers' compensation costs.

If the government is not willing to candidly admit that Bill 162 is primarily designed to reduce the cost to industry of compensating injured workers, the legislation makes no sense. It is morally reprehensible, philosophically unsound, economically short-sighted, politically regressive and legally inconsistent.

Surely you have asked yourselves why the protests of labour have been so loud, sustained and unanimous. Surely you feel that there is more behind our outrage than a concern over a redistribution of current compensation funding levels. Surely you know that to dismiss the urgent representations of those who will be most affected by this bill and continue to adhere stubbornly to the party line will make a mockery of the public hearing process in our democratic system.

The Canadian Paperworkers Union joins the rest of organized labour and other supporting groups in demanding the withdrawal of Bill 162. We do so as a result of our long and painful experience with the Workers' Compensation Board, our intimate knowledge of the realities of the industry in which our members work and our careful analysis of the provisions of Bill 162 itself. This brief will be able to give you only an outline of those three elements of our opposition. The flesh and blood reality can only be understood through direct experience, experience we would not wish anyone to endure, not even our opponents.

Philosophically, the concept of workers' compensation is simple. Those engaged in enterprise for private and personal gain have a moral liability towards those who are injured in their service. The same principle applies to public enterprises which are created and administered in response to the needs of the entire society. Given the complexities of civil law and the vast imbalance of legal power between workers and their employers, it makes sense for the state to assume the responsibility of ensuring that those liabilities are discharged with fairness, justice and speed. Indeed, that is the motto of the Workers' Compensation Board.

The persistent main obstacle to achieving that goal has been, and remains, the definition of "compensation." Webster's dictionary gives the first meaning of compensation as: "The act or action of making up, making good, or counterbalancing: rendering equal." We all know that this is not what the word means in Ontario. The act should have been the Workers' Partial Compensation Act. Bill 162 takes us further from the true meaning of compensation, as we will demonstrate.

The second and equally persistent obstacle is the problem of determining what constitutes an injury or disease of occupational origin and how to determine when and if a person has recovered. The shortcomings of medical science, the wide variations in human psychology and physiology and the intense efforts of employers to reduce compensation costs have created an inhuman and arbitrary system of resolving these two issues.

If a worker's injury is not a witnessed accident from which he recovers in a predictable and reasonable time, he is likely to be subjected to prolonged deprivation of income, intrusive investigations, harassment by employers, attacks on his credibility and personal worth and, in many cases, ultimate defeat in his quest for justice. Bill 162 will do nothing to change the situation; it will make it worse. The government is clearly taking the side of the employers in these matters and, in doing so, is destroying the moral and philosophical foundations of workers' compensation.

When it comes to the reasoning behind our opposition to Bill 162, there are so many offensive and illogical features of the bill that the task of ranking them in order of importance has been difficult. Therefore, we have arranged our objections in five broad categories: moral objections, conceptual flaws, legal inconsistencies, serious omissions and political mistakes. Many provisions of the bill fall into more than one of these categories, of course, and this will be noted in major instances.

Moral objections: Our moral objections arise out of our conviction that certain provisions of Bill 162 violate the principles of fair compensation, natural justice or common human decency.

Section 41, maximum loss of earnings: There is no conceivable excuse for imposing a benefit ceiling on injured workers other than to keep compensation costs down for employers. Workers already suffer a 10 per cent loss of net income as a penalty for being injured. This has been feebly justified as a means of providing an incentive for claimants to return to work.

This is an absurd proposition on three counts: (1), bodies do not heal faster through financial incentives; (2), encouraging workers to return to work before they have recovered invites reinjury and greater compensation costs; (3) those few claimants who may intentionally extend their benefit period in the knowledge that they are not disabled from work will hardly be induced by a 10 per cent increase in income.

Many of our members who are skilled tradespeople or who work in highly productive industries, pulp and paper mills, for example, are severely penalized by benefit ceilings. Many of them, especially in smaller communities in northern Ontario, are sole family breadwinners. In a society where wrongfully dismissed executives can win up to two years' full salary from the courts, it is morally repugnant to drastically cut the income of higher-paid industrial workers who are injured on the job. Of course, the penalty is compounded in perpetuity if the worker is permanently injured and cannot return to his regular employment and earning level.

1510

Subsection 45(2), noneconomic loss: The government's view of the value of human life and limb is shocking in the extreme. We cannot find the words to adequately express our revulsion at the concept embodied in this section. While we can appreciate that it is difficult to assign a value to permanent disability, judges, juries and individuals making out-of-court settlements make these decisions every day. There is absolutely no correspondence between the amounts that will be paid under Bill 162 and the amounts of similar permanent disability being settled in civil actions.

Allowing for the no-fault nature of workers' compensation law, there exists some justification for somewhat lower settlements, but section 45 represents an unbelievable disparity between the compensation rights of workers and the common law rights they have once they leave work.

Furthermore, does not the fact that many, if not most, older workers will receive no compensation whatsoever for disabilities which will rob them of many of life's pleasures to their dying day offend your sense of decency? If you vote for this bill, we will assume it does not.

Subsection 45a(1), the 12-month limit on section 40 benefits: It is unfortunately very common for our members to suffer serious injuries which require much longer than a year to heal. Severe back injuries are the most common example, but we have members who have been horribly burned in fires and require treatment which can last for a very long time. This section would automatically drop such a worker into a different benefit category and introduce unwarranted stress and complications to his life. It will have the effect of inducing some workers to return to their pre-accident jobs before they are physically ready to perform them. As long as a worker is recovering, he should be entitled to section 40 benefits.

Subsection 45a(3), the board deeming of suitable and available employment: Workers who are severely and permanently injured and cannot return to their former jobs will suffer predictable psychological effects. Their self-esteem will be damaged, even shattered. Facing the rest of their lives with a painful disability or visible handicap will be more than moderately depressing. Moreover, they know how prejudiced employers and potential co-workers can be when faced with disabled applicants or co-workers. For these and other reasons, permanently injured workers will have unusual difficulties looking for and finding suitable and available employment.

The board's typical approach to encouraging such workers to find work is to bludgeon them with the threat of economic capital punishment. This section will make the matter even more inhuman. The board will be able to reduce benefits simply on the ground that employment exists that is within a worker's capabilities, as determined, no doubt, by board doctors. The degree of competition for such jobs, the precise combination of qualifications and experience required by the potential employer, the psychological adjustment period needed by the injured worker and so on will not figure into the calculations under this section.

By giving the board such sweeping discretionary powers over injured workers' economic life, you are asking for the appeals system to be overloaded. That much is obvious. If you ignore our advice and proceed with this legislation, we demand that the appeal process be greatly speeded up through the appointment of many more qualified hearings officers and appeals tribunal members.

Subsection 45a(4), minimum benefits for older injured workers: Have the courage to be honest. The minimum benefit under this section is most assuredly going to be the maximum. The floor will become the ceiling. This is virtually a natural law of insurance administration whether it be public or private. If you are unable to believe this, we invite board officials to provide several credible examples where this will not be the case.

Moreover, older workers will have a difficult task appealing decisions of the board that they are "unlikely to benefit from a vocational rehabilitation program," particularly in view of the undeniable double prejudice against older disabled workers. For such older workers, the more severe the injury, the more likely they will live out the rest of their days in abject poverty. On what grounds can anyone here support such an inhuman scheme?

Section 45b, retirement pensions: In recent years there has arisen a slow but growing movement in pension plans, especially among jointly trustee plans, to carry injured and disabled workers for the period of time they are in receipt of workers' compensation benefits. There is a distinct danger that this section, as presently written, will retard progress in this area. Employers will naturally resist paying twice for injured workers' pension benefits.

We suggest the same objective can be more efficiently and fairly achieved by requiring the maintenance of pension plan contributions, where they exist, until the injured worker is actually re-employed. Since it is likely the injured worker's new earnings will not match previous earnings, the 10 per cent provision on future wage-loss benefits paid should be kept. Please keep this in mind while rewriting this legislation.

Section 54a, vocational rehabilitation: We object in the strongest possible terms to a law which does not guarantee rehabilitation rights. The process of quickly adjudicating disputes over what is an appropriate rehabilitation program should not be difficult to set up. The fantasized problem that permanently injured workers will demand too much or too expensive rehabilitation could not possibly compare with the well-documented present problem of massive numbers of permanently injured workers being abandoned by the board and cast on to the industrial waste heap. I refer you to the Majesky-Minna task force report. Workers who cannot return to their pre-accident jobs have had their livelihoods stolen from them. The concept of compensation must include rehabilitation.

Subsection 54b(1), reinstatement and re-employment exclusions: What could possibly be the grounds for denying over 30 per cent of the workforce the basic right to return to their job once they recover from a compensable injury? This is especially puzzling in view of the rather large loopholes in these rights. The provisions will hardly be onerous even for smaller employers. Under this section, a clerk in a small grocery store who injures her back lifting heavy cases may lose her job as well, even if she recovers quickly. Does this seem just to anyone on this committee? Please identify yourself by voting for this bill.

Subsection 54b(2), reinstatement and re-employment rights: The WCB's own studies have shown that a disproportionate number of injuries are suffered by newer workers for an obvious reason: lack of training and experience. We object to their being excluded from the provisions.

Subsection 54b(3), time limits on employers' obligations: Once again,

the government has half-heartedly embraced basic human decency. We reiterate that many severe injuries require years from which to recover. Why should more severely injured workers have lesser rights? What is the burden for the employer compared with the lifelong consequences that will likely result from a loss of stable, well-paying employment? These are not rhetorical questions. We demand answers from the government setting out its justifications for these limitations on basic rights.

Subsection 54b(5), further limits on employer obligations: If a worker is discharged for cause, so be it. If there is a layoff due to a lack of work, our members are used to that. Apart from these considerations, why should an employer be legally permitted to rid himself of a reinstated worker a mere 181 days later? Who thought up this rule and why? Once again, we demand that this be explained to us. It makes no sense.

Subsection 54b(8), seniority override: We will not permit anyone to point an accusing finger at us for objection to this section. It is the union that fights for its injured members' rights to compensation; it is the union that negotiates light-duty jobs and arbitrates for reinstatement with employers; it is the union that bargains, and in some cases directly pays, for maintenance of health and pension benefits for workers who are off the job, and so on.

We cannot, however, allow the government to shift the burden of injured workers from employers on to older workers whose seniority may finally allow them to secure an easier job after a lifetime of back-breaking work. This is industrial reality, and seniority is equity. Who will compensate the older worker whose hard-earned equity is stolen by legislation? Perhaps those of you who sit in chairs all day, regardless of your age, simply do not understand what this section really means. Please try to think about it a little harder.

Sections 133, 134 and 135, transitional provisions: We doubt that the board conducted actuarial studies on the financial impact of giving workers injured before Bill 162 becomes law the same rights, where they are superior, as those who will be injured after the new law. We suspect that three classes of injured workers are created merely to simplify internal board administrative procedures. This is unacceptable. It is analogous to not enforcing the legislative human rights of those who were born black or female before the Human Rights Code came into effect.

Conceptual flaws: We determine conceptual flaws in this legislation to be provisions that contradict medical reality or sections that embody principles which are restrained from logical fulfilment.

Section 5a, maintenance of benefits: Employment benefits constitute a significant portion of total earnings. Union members regularly and knowingly accept smaller wage increases in return for improved health and welfare and pension benefits. Clearly, this class of earnings is as worthy of compensation as hourly wages. Why then the limitation to one year? There is no reason to suspect that a seriously injured worker's family has any less need for dental, major medical or life insurance. Bill 162 already provides for a limited maintenance of pension contributions beyond one year. The cutoff of benefits that are needed in the present seems gratuitous. These benefits either constitute compensation or they do not. Which is it?

1520

Subsection 45(8), reconsideration within 90 days: Quite obviously, a request for reconsideration of a permanent impairment assessment should be based on medical grounds, although quite obviously a worker would be well advised to consult a medical specialist for an opinion prior to requesting such a reconsideration. The regrettable reality is that it is difficult to get an appointment with many specialists within six months, let alone three. This 90-day limit is unrealistic and serves no real purpose.

Subsection 45(14), limit of two reassessments in a lifetime: We are not aware of any medical evidence that all or any permanent disabilities undergo significant deterioration only twice in a person's life. If there is such evidence, the board should make it public. If there is none, this section must be deleted as nonsensical. From another perspective, the board has produced no evidence that frivolous and patently unjustified requests for reassessment are presently an administrative burden that must be curtailed.

Clause 45a(3)(e), what constitutes suitable and available employment? Available employment should be defined as employment that is actually available to the workers personally. Otherwise, the concept makes no sense. Consider the case of a worker for whom security guard work is deemed suitable and available. He applies for such a job and is not hired. How can it then be available? Another example would be a worker who is laid off from a suitable and available job. If she had not been injured, she would probably still be at her pre-accident job. What is her subsequent status under this provision?

To digress briefly, this is of course of major concern to us. There are times we forget that Toronto is not Ontario, that there are some small centres in this province with one industry. That is where the majority of the Canadian Paperworkers Union membership is found. Alternative work may be available in the area 50, 60 or 80 miles away. It may not be available at all in that area. We would like to know exactly what the minister means by presenting this bill in the sense of what is required of that employee. Is he now supposed to uproot his family where he has been living for half a century and move to a larger metropolitan centre? That is a very important question for us.

Legal inconsistencies:

Clause 45a(3)(b), Canada and Quebec pension plan offset: In order to be eligible for Canada disability benefits, a worker must be medically certified as totally disabled and incapable of any gainful employment. Logically, a recipient of these benefits could not be deemed by the board to be able to earn anything in "suitable and available employment." If the worker is indeed capable of any employment, he has no statutory entitlement to Canada disability benefits. Even if this paradox were to be magically resolved, we would object strenuously to this theft of benefits that are paid for through a separate income security program.

Subsection 45a(4), minimum compensation for older workers: In our opinion, discrimination on the grounds of age violates the Charter of Rights. Presumably, the government has legal opinions to the contrary. Otherwise, they would not have proposed this rather blatant and regressive provision. We would appreciate their sharing of such legal opinions.

Subsection 54b(1), reinstatement and re-employment exclusions: The same objection obtains as above. Do we not enjoy equality under the law in Canada?

Think of the chaos that would result from an eventual Supreme Court decision invalidating these exclusions.

Subsection 54b(2), reinstatement and re-employment rights: The Human Rights Code is clearly far superior to the rights outlined in this section and should not be undermined. It is inconsistent to propose legislation that reduces rights workers have under other statutes, especially one that has primacy over the Workers' Compensation Act.

Serious omissions:

As we pointed out in the beginning, Bill 162 will not address any of the problems workers now have with the present act and its administration by the Workers' Compensation Board. The government is missing an historic opportunity to redress injured workers' legitimate grievances with the operation of the system itself by requiring the board to speed up its processing of claims and vigorously enforce the act with employers who regularly attempt to defeat its purpose.

While we understand that the board would mightily resist hiring adequate numbers of personnel, there are three areas where the board could make a major difference in enforcement.

Increase fines for nonreporting or false reporting: Current fines against employers who fail to report accidents are a sick joke, a bargain basement licence to discourage workers from making legitimate compensation claims. Many injured workers have waited months for benefits simply because their employer refused to submit an accident report. Greatly increased fines would actually save the board money by reducing the number of investigations necessary to validate injured workers' unreported accidents.

The board should also ensure that employers are not illegitimately reducing their compensation costs by reporting lost-time accidents as no-lost-time claims, and then persuading the injured worker to accept sick pay instead. This practice is widespread, even epidemic, and must be stopped. We suggest the board spot-check no-lost-time accident reports in cases where the doctor's report indicates lost time. Appropriate fines should be levied to deter this practice.

Outlaw safety lotteries: The growing incidence of contests and lotteries for achievement of no-lost-time accident goals must be immediately stopped. First, it is an offensive insult to suggest that workers will be less concerned with injuring themselves if they are not offered some trinket or the remote chance to win a new car. Second, the effect of such schemes is to discourage workers from reporting lost-time injuries and claiming rightful compensation. Who wants to be the jerk who ruined the record? Peer pressure should not be used to artificially reduce compensation claim experience. It would cost nothing to outlaw this reprehensible practice.

Unions should be part of the process of defining modified work: Ontario's experience with occupational health and safety legislation has proven that trade unions are competent and responsible in this area. We submit that the same unions are qualified and capable of participating in decisions on modifying jobs to accommodate injured workers and in identifying jobs that can be performed by disabled co-workers.

In fact, we already do it often in collective bargaining. Requiring joint committees on modified work would reduce potential conflict on this

issue and would greatly benefit permanently injured workers who have a right to return to their place of employment.

Political mistakes:

Section 20, regulations: The government is asking for trouble by giving the board the power to formulate regulations that will be crucial to the determination of benefits for hundreds of thousands of injured workers. It is likely that your constituency offices will be besieged and you will be politically forced to fight the effects of open-ended legislation for which you voted. You will not be able to escape the controversy. The wise thing to do would be to submit important regulations, such as those governing the interpretation of section 45a, to a hearing process. In this way, it may be possible to redeem some of the concepts in that section by specifying interpretations that are reasonable and understandable.

In any event, it is a dereliction of the democratic process to surrender willingly such important social matters to nonelected persons.

Bill 162 as cost neutral: We simply do not believe it. If the regulations that will govern the payment of future wage-loss benefits have not yet even been written, how could their cost have possibly been calculated? The most critical point, however, is that it is a serious mistake to validate the incidence of workplace injuries and deaths in Ontario by making it cheaper, or at best not any more expensive for employers to compensate workers.

Not too long ago, in the corrugated industry represented by our union, a woman, Vilma Arenburg, was killed on the job. The reason? A deficient machine lockout system that could have been fixed inexpensively long before, but was low on the long list of maintenance requirements.

In the converting industry, ruined backs are the rule. Repetitive strain injuries are on the rise. Old, ill-maintained machinery causes many needless injuries. Why? Because workers come cheap.

Whether you want to admit it or not, there is a definite price on workers' life and limbs: the cost of compensation. The lower the price relative to cost of safer work procedures and equipment, the more accidents, disabilities and disease we will experience. It is as grimly simple as that.

For that reason, Bill 162 must be withdrawn. We implore you to do so. You cannot with a clear conscience support legislation that will result in more needless death and disability in Ontario.

Thank you very much for your attention.

1530

Mr. Chairman: Thank you, Mr. Foucault, for your very direct and bluntly worded brief. There is time for a couple of very short questions from Mrs. Marland and Mr. Wildman.

Mrs. Marland: I wanted to ask you if any of your membership has been part of a survey that we understand the Workers' Compensation Board is conducting in anticipation of Bill 162's passage. It is a survey specifically into the economic and noneconomic loss to the injured worker. I just wondered

if any of your injured workers or your membership have been asked anything to do with a similar survey.

Mr. Foucault: I had heard about the survey, but no one has come forward to tell us that he has received an inquiry from the minister or the compensation board on the approach.

Mrs. Marland: Okay. How many members, again, are you representing?

Mr. Foucault: In Ontario, 22,000.

Mrs. Marland: Twenty-two thousand. So it would be rather interesting if out of 22,000, no one had been asked about this survey. Thank you.

Mr. Wildman: André, I want to thank you for your very direct and hard-hitting brief.

We have heard the concept put forward, mainly by employer groups before this committee, of so-called overcompensation of workers. How do you and your union react to that suggestion, that some injured workers in this province have been overcompensated?

Mr. Foucault: It is an absurd proposal. The proposition makes absolutely no sense to us. The system in itself is a shambles and must be addressed. We hope some day to come before a body like this and participate fully in the drafting of proper legislation. We would be more than pleased to respond to that kind of invitation.

In the meanwhile, for accusations, for complaints of that sort to be made, I just simply—we are not unfamiliar with them because some employers in our own industry make them. They are out of line. They are incorrect. They are simply making a statement that employers feel that any kind of compensation is too much compensation.

Mr. Wildman: In that regard, then, I will just close off by asking, obviously, you have gone through this legislation in detail, section by section, and you have raised some very important questions about it that I would hope can be answered. Were you or your union or representatives of the Canadian Paperworkers Union consulted either by the compensation board or the ministry prior to the drafting or tabling of this bill?

Mr. Foucault: Absolutely not.

Mr. Dietsch: I just have a very short question in relation to your comments with regards to regulations. I understand by your presentation that you are aware how regulations are made. I am curious to know, what group or what body do you feel would best draft regulations that would be more acceptable than the current process of the WCB making recommendations, and then of course, regulations being dealt with by the Lieutenant Governor in Council and being investigated by the cabinet before they are firm? What body do you feel would best deal with regulations?

Mr. Foucault: Quite frankly, I think this act will be given serious meaning by what those regulations eventually become. Perhaps some of the concerns we have expressed here should not even be dealt with by regulations; they should be dealt with by legislation.

When we talk about the speculation right now with the cost-neutral

nature of the system, that is strictly speculation. You cannot come to that conclusion without having the regulations, unless there is someplace we do not know about, and if it is out there we would like to hear from it, because it will play an important role in determining what this means.

It should not be up to nonelected people to give meaning to legislation that the Legislature will eventually pass. That is the responsibility for which we see you being elected. It would be a committee of this Legislature that I would see participate in that process.

Mr. Dietsch: Regulations are put forward by the government and dealt with in cabinet and they are all elected individuals. I just wondered—

Mr. Foucault: We are proposing a hearing process where the body that would conduct it, we would propose, would be a committee of the Legislature similar to this one.

Mr. Dietsch: I see. Okay. Thank you.

Mr. Chairman: Mr. Foucault, thank you, and Mr. Smart and Mr. Langley for your presentation.

The next presentation this afternoon is from the United Food and Commercial Workers. I think Scott Penner is here, and others perhaps. Welcome to the committee. I think you know you have a half-hour in which to present your brief and/or have a dialogue with the members.

UNITED FOOD AND COMMERCIAL WORKERS

Mr. Penner: You have before you a written brief that is fairly extensive. What we hope to do is address some of the high points of the bill that we are directly opposed to.

First, I would like to thank you for the opportunity to address our concerns with the proposed Bill 162. Our local represents over 3,000 members in the cities of Kitchener-Waterloo, Guelph, Cambridge, Brantford, Caledonia, Wasaga Beach, Fergus, Owen Sound, Elmira, Kincardine, Port Elgin, Goderich, Orangeville, Strathroy, Listowel, Bolton, Orillia, Alliston, Ingersoll, Tillsonburg, Wingham, Uxbridge, Ancaster and Toronto. The employer of our membership is a large retail grocery store chain.

The motto of the Workers' Compensation Board is "justice and humanity speedily rendered," and we would like to go on record as saying that we feel there is nothing about Bill 162 that will provide justice to injured workers. In fact, we feel it is discriminatory and violates the Human Rights Code.

Where is the humanity in a bill that will cause workers, injured while performing duties for their employers, to possibly end up living off old age security and possibly welfare?

The only thing about Bill 162 that has been speedily rendered is the attempt by this government to cram it through with no preconsultation with a single injured worker or with injured workers' groups or unions that deal with the problems that literally thousands of injured workers face.

Bill 162 represents a large step backwards and weakens compensation

benefits intended for injured workers, especially when you consider that these benefits were intended to replace the workers' right to sue their employers.

An injured worker who is injured badly enough to qualify for a pension suffers that injury for the rest of his or her life, 24 hours a day, not just the eight or 10 hours a day at work. The bill effectively kills lifetime pensions for injured workers of the future. As an example, a meat cutter who loses four fingers on his right hand does not miraculously grow them back at age 65 and does not have the pleasure of playing baseball with his children and grandchildren from the time of the accident through to his or her death.

The bill, in our view, is also very discriminatory on the basis of age, length of service, workers in small businesses with less than 20 employees, workers in the construction industry and workers who are already injured.

In the area of noneconomic loss, why is the age of an injured worker being used as part of the calculation? A permanent injury is just as devastating and debilitating to a 45-year-old worker as it is to a 25-year-old worker. It is the loss of a limb or function, not the loss of potential earning power, that is being compensated for here.

Also, the amounts used for calculation in the bill, \$45,000 and \$20,000, are not clearly explained. Who decided on these amounts and how were they arrived at?

In the areas of wage loss and rehabilitation, we find the format and loosey-goosey wording the bill proposes to introduce ludicrous and totally unacceptable. What the bill promises to do is to weigh the amount of compensation to be granted, based on 90 per cent of the difference between the worker's net average earnings before the injury and the net average earnings the board considers the worker is able to earn after the injury in "suitable and available employment."

What must be realized here is that the worker is not working or earning any money at this imaginary fairy tale job. If Mr. Peterson and Mr. Sorbara applied this principle of deeming of imaginary jobs to the unemployed workers of Ontario, they could probably reach zero unemployment in Ontario—very commendable.

The board may use such things as age, education, language barriers and co-operative attitudes of the injured worker in deciding what would be suitable and available employment.

Not only does this section let the board decide what job and how much a cashier with a permanently injured shoulder will earn in Mr. Sorbara's Fantasyland, it will further give the board the power to review the amount of compensation the injured worker is entitled to receive, two years after the initial determination, five years after the initial determination, and within two years after a reconsideration has increased the level of permanent impairment.

This could cause more employers' dollars to go to board doctors and administration costs than to injured workers, where they were intended to go. After all, it is the Workers' Compensation Board.

Bill 162 also puts strict limitations on an injured worker's ability to be reassessed for entitlements. Once again, the board is given even more decision-making powers. The injured worker has a choice between accepting a

board doctor or a doctor from a government appointed list. Is there really a difference here?

The worker is granted an opportunity to apply for reconsideration if he or she suffers a significant deterioration of condition that was not anticipated at the time of the most recent medical assessment. Who is going to decide what is significant and what is nonanticipated?

The bill also states that the worker must wait 12 months after the board's most recent decision before applying for reconsideration and may only request reconsideration twice in his or her lifetime. We can only suppose that in Mr. Sorbara's Fantasyland there are no injuries that worsen before 12 months and no injuries that worsen more often than twice in a lifetime, because that is certainly not the case here in Ontario.

In a press release, the Ministry of Labour stated: "The reforms to the permanent partial disability award are designed to be cost neutral. They will distribute resources more equitably within the system."

It is obvious to us that Bill 162 is designed to be cost neutral. Consider a 40-year-old grocery receiver earning approximately \$2,000 a month net, who slips and falls while unloading a tractor-trailer load of stock and injures his back to the degree that he would get a 30 per cent pension. He will receive a pension in the range of \$540 per month, paid for life. This example is from before Bill 162. After Bill 162, the same worker can look forward to a small lump sum, based on age, of around \$15,000, or about \$61 a month. Also, he might get some wage loss benefits based on an imaginary job and can look forward to being reviewed to see if he still deserves a pension.

The reinstatement section of the bill, which could offer some meaningful and necessary language, does offer more omissions and limp penalties and language. In our industry there is a high turnover rate of part-time workers. If Bill 162 passes, a part-time parcel pickup worker who is unfortunate enough to lose his toe in a shopping cart conveyor system, similar to what pulls your car through a car wash, would not be eligible for reinstatement, because he had been employed for less than one year. It is the younger and less experienced workers, most likely in all industries but certainly in ours, who are more apt to be prone to injuries.

Reinstatement to light duties does not usually apply to our industry and a phrase like "suitable employment that may become available" could be used to make an injured worker wait for the suitable employment to become available. This section could have been used to cause employers to make honest and meaningful attempts to modify work stations and jobs, so as to create suitable employment to become available.

A good example of this can be found in our industry. The next time you are out buying your groceries, pay attention to the cashier you are about to give your money to. Gone are the days of the old hand-cranked cash register. Large grocery chains have gone high-technology and are using computers and laser scanners, at great expense, all in order to get you through the lineup faster. It is like being on piecework in a factory. If you were to look or ask, you would most probably find that the cashier who is putting through your order is suffering from or has been operated on for one or the other of many types of repetitive strain injuries. They may have scars on their wrists or be wearing a brace. These are signs of carpal tunnel syndrome. You may see them cringe or flinch as they twist and stretch from repetitively putting your groceries through and on to the weigh scales. These are signs of repetitive

back strain or acute tendonitis. These are the high-tech injuries that will be the pensionable injuries of the future in our industry.

It would be unfair to ask one employer to bear the cost of modifying and not another, so we need language to cause all employers to take serious action in modifying, for example, checkout stands. This would be a step in the right direction towards making repetitive strain injuries less likely to happen or be as severe and, therefore, would be cost neutralizing to permanent partial disability awards.

I would like to introduce Brook Atkinson.

Mrs. Atkinson: My name is Brook Atkinson. I am employed with Zehrs Markets and have been for 10 years. I am a member of the UFCW Local 1977. I work in the meat department as a wrapper and I am afflicted with carpal tunnel syndrome.

I was initially diagnosed with carpal tunnel on my right hand in 1986. As a result of the repetitive motion involved in my occupation, my fingers and hand are decrepit. I received surgery in January 1987. I was again diagnosed with carpal tunnel on both hands in December of last year. My left hand would fall asleep for periods of three hours to two days at a time. I received surgery on February 15 of this year and I am currently undergoing physiotherapy. I am scheduled for surgery on my right hand again on April 19.

In my physiotherapist's opinion, I should not return to my job. In order to support this opinion, my physiotherapist has scheduled an appointment with a hand specialist on Thursday of this week. The sole decision about my return to work will rest with him. I want to return to my job. My doctors have advised me though that if I do, I will be back in again and they can only operate so many times for it to be effective and surgery performed again can cause more damage than good.

Therefore, I need to be retrained for my work station or my work station has to be modified. Modification is impossible, because the function I perform must be done in a refrigerated area and the constant repetitive motion involved aggravates carpal tunnel syndrome. Retraining is unsuitable as all the duties in a supermarket involve repetitive motion.

Bill 162 contains no legislation for compulsory work station modification or any substantial back-to-work language. Under Bill 162, I would be pensioned off at a very low rate and forgotten. Bill 162 does nothing to help me or my affliction. I urge you to scrap Bill 162.

Mr. Penner: The original intent of the bill was very clear to us when we saw that appeals to the Workers' Compensation Appeals Tribunal would not be allowed regarding the type of work an employer does or does not offer. On January 19, Mr. Sorbara made some amendments to the proposed bill and made available once again to injured workers the right of appeal to the WCAT. At most, this represents a sideways step back into the right direction.

Not wanting to sound too down on Mr. Peterson and Mr. Sorbara, we know that if you scrap Bill 162 and have been listening to the many delegations, you could come up with some meaningful and necessary changes to help injured workers. Let's remember that the Workers' Compensation Board was set up to provide injured workers compensation paid by employers in lieu of lawsuits. Let's have employers pay for injuries, not injured workers themselves and the voting taxpayers of Ontario via unemployment insurance and welfare.

Thank you again for the opportunity and your attention. We would enjoy trying to respond to the questions you have.

Mr. Carrothers: I appreciate the presentation you have made. I would tend to agree that if the bill were to cause the kind of things you suggest are going to happen, it is virtually unsupportable, but I am not sure that is really going to be what results.

Saskatchewan and Quebec have gone to this type of wage replacement system. This legislation is drawn to some extent on that and we are hoping to improve it; they have problems. Your union must have locals in those provinces. I am wondering if these kinds of consequences have resulted in those provinces.

1550

Mr. Penner: I believe so, to the extent that if you were to compare the current compensation system and the benefit levels that they receive, not only in the western provinces but in others, in comparison to what we have now, they are greatly reduced.

Mr. Carrothers: Do you mean the benefit payouts have dropped in those provinces?

Mr. Penner: Compared to what we have.

Mr. Carrothers: Again, that is different from information we have received from other sources, which seems to imply that right across the country payouts are up, even in those provinces.

Mr. Penner: When you say they are up, are you referring to—

Mr. Carrothers: The benefits that are being paid out are higher and higher.

Mr. Penner: Compared to the current system that we enjoy here in Ontario?

Mr. Carrothers: Just as a general trend across the country. I guess the point I was trying to make is that it appeared to me from the information I have seen that in those provinces where it has gone this way you have not seen a kind of decline in benefits, you have seen, hopefully, a better system and the benefit levels stay the same.

Mr. Penner: I do not believe that to be true.

Mr. Carrothers: Okay. That is certainly the information I had seen.

Mr. Wildman: It may be helpful. On page 4 of the appendix in the presentation, they deal with that: New Brunswick, Quebec, Newfoundland.

Mr. Penner: I cannot respond to—you make a broad statement that you feel that in western provinces their benefit levels have gone up. I know that there is—

Mr. Carrothers: Again, half the provinces have gone this way and I just wanted to see—

Mr. Penner: That does not necessarily make it right for Ontario, though.

Mr. Carrothers: No, it does not, but the point was to see what their experience has been, because we can debate what we think will happen; it becomes quite subjective. That is why I was trying to see what your experience has been, and obviously it is here, so I appreciate that. Thank you.

Miss Martel: Let me ask, Mr. Penner, do you do representation? Do you do workers' compensation on a fairly regular basis?

Mr. Penner: I do. I do not get involved in the appeals procedure at formal appeals, but I do represent the 3,000 people at work.

Miss Martel: You would be aware of some of the cases of people being cut off benefits, though.

Mr. Penner: Yes.

Miss Martel: Let me ask you, have you run into any cases where workers have been deemed to do these fantasy or phantom jobs and as a result have been cut off benefits? Are you in a position to give us any examples?

Mr. Penner: As yet, we have not had anyone in our local who has been deemed, but it obviously is a large concern.

Miss Martel: What about rehabilitation? Your colleague has talked about some of the problems of where she works. If the whole work station is not modified, she is not going to be able to return there or she returns at risk of further permanent damage to her wrist. If you have people who have to be retrained because they cannot move back to where they were, as in her position, what kind of success rates are you seeing in that area, or do you do enough to make a comment?

Mr. Penner: As a local, we have put forward, jointly with the company, a training centre. Mind you, when it comes to the area of people who are off on compensation, as I stated, there is not too much of an effort made to modify work stations or create light duties. In most cases, they wind up being off full term. That would represent a savings to an employer, I am assuming, if they were to get back to meaningful work, but the effort is not made, somewhat because of the situation of our work stations and the likes. They would have to sit down and do some serious considerations to do any type of modification.

Miss Martel: If the effort is not being made by the employer, has there been much of an effort made by the board to offer retraining for other positions outside of those work environments?

Mr. Penner: When you get involved in rehabilitation and the like, if you take someone who is making \$14 or \$15 an hour and has worked in the grocery industry for any number of years and that is basically where most of his experience is, he is certainly capable of being retrained but in most cases winds up in a job that pays less than half of what he was making and with terribly reduced benefit levels as well. It is one thing to rehabilitate people to go back to work, but then it is another thing to rehabilitate them to go back to an entirely different lifestyle because of their wage loss.

Mr. Chairman: Mr. Penner and Ms. Atkinson, thank you very much for

your presentation. I hope your wrist recovers.

The next presentation is from the National Congress of Italian Canadians. That is the brief with the trilingual cover. Perhaps you could introduce yourselves and proceed. You have half an hour in which to engage the committee.

NATIONAL CONGRESS OF ITALIAN CANADIANS, TORONTO DISTRICT

Mr. Grande: Thank you, Mr. Chairman and committee members. We appreciate the opportunity to appear before you today and to express our concerns on Bill 162.

My name is Gregory Grande and I am the president of the National Congress of Italian Canadians, Toronto District. Beside me is Ms. Ivana Petricone and further on is Tony Pileggi. Ms. Petricone is a volunteer lawyer at the Rexdale Community Information Legal Services. Tony Pileggi is a board member and an injured worker.

The National Congress of Italian Canadians, Toronto District is an umbrella organization whose primary mission is to advocate for, promote and mobilize Italian Canadians in greater Metropolitan Toronto.

Since its inception in 1974, the congress has been vitally interested in the workers' compensation legislation, as thousands of Italian Canadians have been victims of injuries at work. During the last 15 years, the congress has responded to the various task forces and white papers and has submitted to the government of Ontario proposals to amend the original bill of the Workers' Compensation Act.

This submission today addresses Bill 162 from the perspective of Italian Canadian injured workers. At this point, I would like to call Ms. Ivana Petricone to present her major concerns on Bill 162.

Ms. Petricone: It is my job today to go through the technical parts of this bill and the concerns of the congress with respect to those parts. They are outlined in the brief; but unless the committee prefers it, I will not read the brief but will simply highlight the salient features of it.

I feel that I can say fairly safely that the position of the National Congress of Italian Canadians, Toronto District is that as far as this bill impacts on the lives of injured workers, it must be amended to such a broad extent that the preferable course, as far as we can tell, would be not to have the bill proceed to enactment but to start again.

The main change in workers' compensation legislation that Bill 162 will put into effect is the dual award system for dealing with assessments of permanent impairment. The congress supports the concept of compensation for noneconomic losses. It is very clear, and I am sure that it is clear to the committee, that injured workers sustain injuries to every aspect of their lives, not only the aspects that relate to their employment. However, the congress has concerns with the system, as set out in Bill 162, to award noneconomic losses. It will replace the permanent disability pension system, as we know it today, for future injured workers.

Our primary concern is that the dollar value of the noneconomic loss is substantially less than the dollar value of the existing pensions. In certain examples, the difference is a factor of 10 times less than what the dollar

value would be of the pension awarded under the current system. Therefore, the concern is that, although the concept is a very valid one that we support, the practicality and the mechanics of this particular bill would mean that the injured worker would receive a substantially less valuable award than under the existing system.

There is the issue of the loss of security of a lifetime pension. Many injured workers today have small pensions; none the less they are guaranteed for life. In this bill, the noneconomic loss does away completely with a guarantee of any payment for life, as far as I can tell. I think this is a serious erosion of the security that an injured worker would have with the lifetime pension.

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The congress is further concerned with the 90-day limit, imposed by subsection 45(8) of Bill 162, for an injured worker to apply to the board for reconsideration of his or her award. Up until now, injured workers have not had to deal with these sorts of limitation periods. It means that they have to engage legal assistance of some form to ensure that they meet the requirements of the act. We wonder what the purpose is of imposing such a strict limitation at this point.

The congress is further concerned, in its analysis of this bill, that the infamous meat chart remains. In our brief, we have set out the two sections, subsection 45(3) of the existing Workers' Compensation Act, which permits the rating schedule, and the proposed clause 69(1a)(c) of Bill 162, which would also permit a rating schedule to be passed by regulation and that regulation could be made by the Workers' Compensation Board.

This rating schedule is probably the one piece of legislation that has gone the farthest in undermining the dignity of injured workers and adding to the humiliation of injured workers. It is regrettable that there would continue to be legislative language that would permit the rating schedule without input from injured workers. The opposition of workers and workers' advocates to the meat chart has been because there is no real connection, as far as they can see, with the awards made under the rating schedule and the real impairment of earning capacity. It causes us concern that the rating schedule can continue under Bill 162.

I would like to comment on subsection 45(13) of Bill 162, which permits an injured worker to apply for an increase in the award received for noneconomic loss if there is deterioration in his or her condition. The concern of the congress is that the wording of this section places a very heavy onus on the worker. Not only must the worker show a significant deterioration—and "significant" is not defined in this legislation, so it remains a discretionary term—the worker must also satisfy the board that the deterioration was not anticipated at the time of the most recent medical assessment under section 45.

The congress is concerned and wonders how an injured worker will be able to show that a medical assessor did not take into consideration the deterioration which is now upon him or her. Our experience is that the board medical assessors do not keep detailed notes of their examinations and assessments and we think this section is particularly onerous for injured workers who have lengthy illnesses that tend to deteriorate rapidly.

In addition, the congress is concerned with the limitation of applying

for the increase twice in a lifetime. At present, injured workers can apply at any time when there is a deterioration in condition. The congress's position is that right should be maintained.

The other arm of the dual award system in Bill 162 is of course the future loss of earnings. It is the position of the congress that benefits under the Workers' Compensation Act should compensate for actual income loss as closely as is reasonably possible. When we examine Bill 162, our concern with respect to future loss of earnings is that there will not be compensation for actual loss of earnings. All future loss of earnings paid pursuant to Bill 162 will be at the discretion of the board and the board administrators.

There is no requirement in this bill that a worker be re-employed at an actual job or even have an offer of re-employment. The payment will be based on what the board considers the worker is capable of earning. You have already heard today, and I have, that the act permits the board to determine, in regulation, what constitutes suitable and available employment.

I would submit that even if the board makes those regulations and even if they are passed by cabinet, one of six criteria, including personal characteristics, must still be taken into consideration by a claims adjudicator, by an administrator of the board.

There are mandatory review provisions that chip away, again, at any form of security that a worker might have. Even if a worker gets a substantial future-loss-of-earnings payment, he or she cannot be secure that those payments will continue. It is interesting that today I heard someone who spoke on behalf of employers underline the lack of security which this future-loss-of-earnings provision has. I would ask you to imagine what that means to the injured worker who relies for his basic needs on the payments made under these provisions.

Bill 162 deals with vocational rehabilitation. As you will note from our brief, the National Congress of Italian Canadians prepared a response to the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board. The congress is quite dismayed that Bill 162 did not grasp the opportunity to institute a statutory right to rehabilitative services. Bill 162 provides only a right to assessment; it does not provide a right to rehabilitative services.

In addition, the congress is concerned that even those provisions with respect to assessment are available to only those workers who are receiving benefits under section 40. Elsewhere in the bill it says that the board must assess for future economic loss within 12 to 18 months. So an injured worker who is severely injured and who takes longer than 18 months to get over the phase of temporary disability would not even have access to these rehabilitative provisions. Perhaps it could be said that those who need it the most, because their injury is very severe, would not have access to these services.

The bill also deals with mandatory reinstatement, a very positive concept that the congress wishes to underline. It is very important that it be in workers' compensation legislation. The congress is, however, concerned that the right established by Bill 162 is extremely restrictive. The three areas of exclusion give us particular concern. Many Italian-Canadian workers are employed in the construction industry. To exclude the construction industry means that many Italian-Canadian injured workers will not return to work.

Our concern is also with the definition of "construction industry." Will it affect office staff? Will it affect cleaning staff or materials manufacturing? Many construction companies have subsidiaries that do work that is not directly related to construction. Will these employers be exempted under this section?

The congress is further concerned with the power given to the board to regulate other classes or subclasses of employers. Again, there is very little certainty when an employee goes to work that his or her employer will not be exempted under this section.

In addition, the real penalty under Bill 162 for an employer not complying with mandatory reinstatement is, in our submission, limited to six months. We see, in examining this bill, little sanction against the employer who rehires an injured worker and then lays that injured worker off after six months, which is the period during which the reverse onus takes hold.

Therefore, while supporting the concept and recognizing that it is perhaps the most positive aspect of Bill 162, we cannot help but express our concerns with the exemptions and the sanctions which will be used to enforce mandatory reinstatement.

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The bill also has another positive aspect to it and that is that it would legislate that an employer would have to pay employment benefits to an injured worker for one year following the injury. At the same time, however, the congress is extremely concerned that those employment benefits contributions are not taken into consideration in the calculation of earnings. By removing them from the calculation of earnings, essentially, the compensation rate of an injured worker would be lower.

As a congress representing Italian Canadians, it has come to our attention that there are a number of bilateral agreements with certain countries—Italy, Greece and Portugal are three that come to my mind—which permit an injured worker to return to his or her home country and continue to receive certain benefits. Specifically, the worker can also be reassessed for a deterioration in condition and apply for reassessment of his or her pension from outside of the country. The congress is concerned that those bilateral agreements may not be practically feasible under Bill 162.

Our questions are these: Will future loss of earnings be paid if an injured worker returns to his or her home country? Will the worker have to return to Ontario for mandatory reviews? Will foreign doctors be able to assess deterioration, particularly if they must anticipate further deterioration in making their assessments? The bill does not address this question. We simply raise it as a concern to the committee that there are a large number of injured workers who do retire and return to their home countries and who enjoy a benefit at this time that we fear may be lost with Bill 162.

Before concluding, I would like to address the problem of existing injured workers. In our submission, the bill does nothing to improve the circumstances of existing injured workers. It creates a difference between classes of injured workers; that is, there will be those who are compensated under the old system and those who will be compensated under the new. The positive step of enshrining reinstatement is not applicable to those injured workers who have fought for it for so many years and so hard.

The majority of Italian Canadians who are affected by workers' compensation legislation are those injured workers of a certain age who in many cases were injured 15 to 20 years ago and whose pensions were assessed on a percentage of their pre-accident earnings, on earnings that they were making 15 or 20 years ago. In spite of the escalation of those earnings or the indexation of their pensions, the real value of those pensions today is substantially less than the pension of the injured worker who was injured in the 1980s. This particular concern is one of a list of many that were not addressed by this reform package. There are others listed in our brief.

Finally, I would like to point out that on page 8 of the brief we have set out those fundamental amendments which the congress sees as essential in order to at least maintain the benefits to injured workers. These are: the addition of a noneconomic-loss benefit to the existing pension system; adding a statutory guarantee that all injured workers will have secure and economically meaningful lifetime pensions; elimination of the meat chart and any legislative language which could permit the existing rating schedule; injured workers having input in establishing a schedule to be used in assessing permanent impairment; the maintenance of the existing right of permanently disabled injured workers to apply to have pensions increased if there is a deterioration in their conditions; full compensation for actual loss of earnings incurred by injured workers with no authority in the Workers' Compensation Board to "deem" possible earnings; mandatory reinstatement without exemptions and with meaningful penalties for those employers who do not comply; a statutory right of rehabilitation as recommended by the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board.

In closing, I would simply like to say we appreciate that the workers' compensation system in Ontario is a system in need of reform. Regrettably, Bill 162 goes a minute way in achieving that reform, and we recommend that unless the substantial amendments we have suggested are made to the bill, the bill be withdrawn and we start over.

Subject to any questions that you might have, those are my comments.

Miss Martel: I have two questions. The first is on the section on future loss of earnings, which you dwelt on for a bit. When we had the Workers' Compensation Board before us during the hearings, Mr. Wolfson said it was his view that if a worker, after the five-year review, did indeed still have a future-loss-of-earnings benefit, then that would be fixed to age 65. That is not my interpretation, because it is my understanding that it can be reviewed at any point when the board considers it appropriate.

If you have gone through that section, do you think it is a fixed payment after the second review at five years or is it reviewable at any time?

Ms. Petricone: My impression in reviewing that section was that there were two suggested reviews of two years and five years, but that it was certainly available to the board to review the future loss of earnings at any time.

Miss Martel: So there is nothing fixed about it after five years?

Ms. Petricone: In my review of that section, I saw nothing fixed after the five years. I will certainly look at it again.

Miss Martel: I want to ask a question as well about injured workers

who are now disabled and have a permanent pension. The minister has said that if and when this bill is passed, he expects some 20,000 workers to benefit by receiving a pension supplement. The board also made the same comment when it was before us in the hearings. I notice in that section, though, if you go to the transitional section in the bill, that the threshold test must be applied to those workers before they can receive a supplement, and that is the same test we have in pension supplements now, where the board has every opportunity to deem.

I am wondering if you would like to comment on the 20,000 workers the board is quite adamant will be compensated. Do you think it will be that high if the threshold test is in the provision?

Ms. Petricone: The argument was raised in the board meeting of the congress that was held to approve this brief. I must say that I have looked at it a number of times, and with the threshold test in that section dealing with all supplements, including older worker supplements, I see no difference from the way the supplement is being applied now. I am having a difficult time seeing how more than the numbers that are being assisted now will be assisted in future.

The threshold test is still there and there are slight changes in wording in terms of co-operating with rehabilitation, but I fail to see how a large number of workers will benefit from these transition sections, particularly because the threshold test is still there and the interpretation of the threshold test has been conducted by the Workers' Compensation Board until now.

The Vice-Chairman: In closing, you mentioned the exclusions and exemptions and the fact that many Italian-Canadian workers are in the construction industry. How do you deal with the objection that has been raised by the government and by the employer groups in the construction industry that as unionized construction jobs are usually dealt with through the hiring halls and the job may not exist by the time the worker is ready to return to work, they should not be included?

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Ms. Petricone: It seems to me from the bill—and I will certainly let Greg answer if he wishes—that there was provision made for those collective agreements that might be in conflict with the mandatory reinstatement provisions. The bill does say, if I am correct in my recollection, that where the mandatory reinstatement provisions of the bill are more beneficial to the worker, they will override the collective agreements. I fail to see why that could not apply as well to the union hall.

Mr. Grande: The other point, if I may add, Mr. Chairman, is that even though the job may be gone, the contract may be completed, yet the companies have an existence and they have jobs all over the place. They have contracts and subcontracts. The employees are not married to the specific job site; they are married to the employer, so to speak. I do not think that argument will hold any water as far as I am concerned.

Mr. Pileggi: I just wanted to make some brief points. One is that the exclusion under 20 workers, with the new system that is around now, especially in Metro Toronto, does not work. What multinational corporations are doing is, instead of opening big places, they have small places where they send workers to the basement, the garage, all over the place. They buy some

machines and deliver work at home. There are a lot of big, big corporations that do get away from the system just by doing that, so those workers are not covered and it is a new tactic from the multinationals.

One thing that bothers me personally, because I am injured and I am injured from 22 years ago, and since I am very much in public relations with the Italian community and I attend many meetings, there is a frustration in our community because all the people who came here 20, 30 and 40 years ago came almost the same route, sewers and construction, and all—not all, but the majority of those people—have their backs broken and they cannot work now.

It is not only the pain that they suffer, it is not only the chronic pain, because they get used to it, like I got used to my pain, and it is important for your committee to give me something back, but it is what is going through their families, their lives. They are, let's say, getting away from their friends, from their family. They have no respect from nobody because they cannot earn it. They cannot bring the bread and butter that the other people who help can.

I do not think there is any price to buy that, because I can tell you, I have four kids, and since the first one was a small one, every time that I come back from work and my kid walks towards me to say, "Hi, Daddy," with his arms like that, instead of embracing him and saying "Hi, son" and giving him a kiss, I have to go like that because I am worried that if he pushes me, he is going to hurt me.

I do not know how those people who make compensation board laws can judge those things. You know, how much do you have to suffer—not only the financial but the moral aspect, that you just have to say to your son: "Just wait. You're going to hurt me." You cannot play with him. How many times has my son said, "Let's go to the schoolyard and play," and I have said: "Daddy's sick. Daddy can't."

There are people worse than me. I am rehabilitating myself. I am rehabilitating myself because I use my talent, I use my mouth to go and find a union that hired me to work, but how many people can? I have an employer for whom it is sensible to get one injured person to work there. Even if I do not perform 100 per cent, I am there and working and they pay my wage. We talked and they know I am injured. But why can that employer do that? I mean, other people can suffer like me. If one firm can do it, others can do it.

This is something that I think is very, very important, psychologically, that people are sick, that people are just being told by the doctor of the Workers' Compensation Board or by other people who work for the compensation board that they are mentally sick. They are not mentally sick; they just have problem after problem every day, starting with their own kids, their wife and others because of the financial situation.

I can tell you one thing—I know you have no time—I injured myself 22 years ago and I have a 20 per cent disability that my doctor says many times is more like 30 or 40 per cent, and on top of that the compensation board never recognizes—I have had an appeal for three or four years that nobody has looked after. They do not care if you suffer or if you do not suffer.

I go to the specialist. The specialist reads whatever is there and just by reading something he says—you do not care. I say: "Can you base my disability? What is it?" "I cannot tell you. I just know that you are not to have basically more"—how do you say it? You are not sick. The deterioration—

The Vice-Chairman: It has not become worse.

Mr. Pileggi: You do not have a bigger deterioration from one year to another.

I wonder, should there be a greater deterioration in order to qualify for something? When you die, then you do not need workers' compensation.

The Vice-Chairman: Perhaps your wife and children might.

Mr. Pileggi: If they go with the Lord in heaven and think they are going to have any benefits either after death.

The Vice-Chairman: Thank you very much. I want to thank the National Congress of Italian Canadians for taking the time to make the presentation to the committee. We appreciate it very much.

Next is the Ontario Liquor Boards Employees' Union. Gentlemen, welcome to the committee. If you could introduce yourselves, we have half an hour slated for your presentation and you can use it whichever way you prefer. You can use all of it yourselves for the presentation or part of it for the presentation and part of it for an exchange with the committee members.

ONTARIO LIQUOR BOARDS EMPLOYEES' UNION

Mr. Stevens: I am John Stevens. I am the staff representative of the Ontario Liquor Boards Employees' Union. Vic Araujo is standing in for Mrs. Sharon McTamney, who cannot attend as she is in negotiations at this time. Mr. Araujo is a health and safety committee member. He is a warehouseman at the Durham warehouse, affectionately known as the elephant warehouse due to its size and the number of injuries that occur there.

In Ottawa on March 9, I spoke to the committee regarding developments in Saskatchewan and a memo from the Workers' Compensation Board where it was following the pattern that goes with the two-tier system. I presented some developments that had occurred in Saskatchewan over the period of the last 10 years.

I never had a chance to present the actual brief, as we had only 10 minutes. I assumed that we had only 10 minutes once again today.

The Vice-Chairman: No, you have a half an hour.

Mr. Stevens: I may go through that brief at a later date.

Mr. Dietsch: No one, to my knowledge, has had 10 minutes. Where were you permitted only 10 minutes?

Mr. Stevens: It was 10 minutes in Ottawa; 10 minutes and 10 minutes.

Interjection: It was 20 in total.

Mr. Dietsch: Yes, okay. The option, I guess, was the same that you are allowed today. At that time you could have used the full 20 for your presentation or allowed some questions, the same as you do today.

Mr. Stevens: There were a number of questions asked regarding Saskatchewan. I have some other information pertaining to that that I will get into later.

The Ontario Liquor Boards Employees' Union paid close attention to the proposed amendments to the Workers' Compensation Act. We were hopeful that with these amendments, our partially disabled injured workers would be allowed to return to some form of gainful employment. Why? Because our employer, the liquor boards of Ontario, which are agencies of the crown, require that injured workers, upon their return, be 100 per cent fit and able to perform all job duties within their classifications.

Modified work has been provided on a very limited basis to an extremely small proportion of injured workers. In fact, our union is aware of only two injured workers who are involved in a modified work program. The union became aware of their involvement in modified work programs only because both members came to the union office on unrelated matters. They expressed their concerns that the modified work programs contravened the collective agreement in place. Upon investigation, we found that it did. It contravened recognition, seniority, hours of work, vacation, attendance and sick leave provisions—over half the agreement.

The union requested the information as to the signed modified work programs that they entered into outside of the collective agreement. To date, both crown agencies have refused to provide it and the union has proceeded with legal action against the crown agencies for bad-faith bargaining and usurping our bargaining rights pursuant to the Crown Employees Collective Bargaining Act. In other words, they will not bargain it. They will not even discuss it at the table and they will not entertain proposals.

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It should also be noted that the Workers' Compensation Board knew nothing of these modified work programs, nor did the workers know that they had the right to supplements. The attempt was made to put them on long-term income protection benefits by a crown agency. They work 20 hours a week and normally would have worked 40 hours a week. They should have received WCB benefits in some form to supplement the lost time. These were compensable injuries and this is a crown agency we are talking about. The point I am making is that Bill 162 will not stop this sort of heavy-handed treatment of injured workers, but in our view legalize it or at the very least eliminate altogether the opportunity for any sort of modified work.

The Minister of Labour insists that these amendments will allow the injured workers to return to work. We do not see how. Subsection 54a(1) provides that the injured worker could receive benefits under section 40. As is the case with all the proposals regarding benefits, they are only what the WCB will deem appropriate. Subsection 54a(2) once again allows the WCB to deem essentially who will receive vocational rehabilitation services and who will not.

This section also provides for the accident employer's involvement when possible. What does this mean? Again, the minister has managed to let the accident employer escape the responsibility to provide modified work programs. They do not even have to be involved. The employers of Ontario are surely pleased knowing that the purse-strings have been tightened once again.

Subsection 54a(4) begins with "if," so once again the WCB has the discretionary power. Deeming—everything is left to the WCB to do as it pleases. Earlier, Miss Martel, you brought up the threshold test. There is a prime example of the Workers' Compensation Board deeming. It is not in the brief, but just recently I had a 61-year-old gentleman on a pension—this was

just last week—and I could not believe it. He was deemed to be capable of doing a sedentary job, although he was also deemed ineligible for voc rehab.

You have to shake your head and wonder what is going on. What is going on is that the word is coming down the pipe to cut back. There is so much pettifoggery and deceitfulness in these proposed amendments it is shameful. The minister has obviously pleased the employers with another obvious set of cost-saving amendments.

Subsection 54b(1) effectively excludes 30 per cent of the workers in Ontario and we still have not heard a reasonable explanation as to why. "Oh well, he's in the construction industry." That does not answer the question why, and we are waiting. When the minister is ready, we will all be there to listen.

Subsection 54b(1) effectively excludes the 30 per cent I talked about. The minister must be extremely proud of this; evidently the employers must be. One of the things that has become obvious during these sessions is that employers praise the amendments; organized labour and injured workers condemn them. It is obvious why. The workers will suffer; the accident employers will escape their responsibility once again.

Clause 54b(2)(a) supposedly obliges the employer to reinstate or re-employ the injured worker. Yet clause 54b(2)(b) also provides the employer with an escape mechanism in the same subsection, because you must remember the 100 per cent fit, that the worker must perform all job duties. Now, all any employer will have to do is say to the compensation board he offered to reinstate or re-employ the injured worker in the position the injured worker held before his injury, but alas the injured worker is unable to perform the essential duties due to his permanent partial disability and due to the nature and demands of the employer's business.

This is being done now; that is exactly what the employers say today. All that has happened is that the legislation will make it absolutely legal. You have legalized the refusal of modified work. Therefore, the employer has no other suitable employment once he says this and escapes his responsibility. The six months is nothing but lipservice.

Subsection 54b(4) is the punishment for noncompliance, which unfortunately lacks teeth. How would you prove noncompliance? If the employer provided the necessary lipservice to the compensation board, either the time limits would expire or the compensation board would accept the employer's reasons for not reinstating or re-employing the injured worker in any event.

The whole section is once again at the discretion of the Workers' Compensation Board, as it states that the Workers' Compensation Board "may," not "will" but "may," and that is an awfully large word for three letters. Again, there are no guarantees, nothing in the way of real and viable protection for injured workers. Therefore, subsections 54b(5), (6) and (7) mean nothing either, except they allow the Workers' Compensation Board almost unlimited power to do as it deems proper. We are moving backwards and, as I will show you later in this presentation, it is a mistake. It was a mistake in Saskatchewan and it will be a mistake in Ontario.

Subsection 54b(8) reiterates just how really out of touch the Minister of Labour is. Very few, if any, employers in Ontario, even the crown agencies, will even look at these types of contract proposals for modified work. Employers see these types of proposals as an infringement on management rights

and would not be so naïve as to take on the responsibility of caring for injured workers when all the Minister of Labour requires is that they provide only the necessary lipservice to escape their responsibility. We feel the bill must be scrapped in its entirety.

I would like to speak now on Saskatchewan. As you are well aware, I spoke about the comparison made by the Minister of Labour of these proposed amendments with the system in place in Saskatchewan. The minister had publicly stated that the Saskatchewan system was running well. It is running better now, 10 years later, but it is still not running well.

Since the minister made the comparison, I will speak about the Saskatchewan board's policies regarding voc rehab services today. The standing review committee, as a result of the public hearings in 1986, made the following recommendations to the Saskatchewan board in 1987. Many of these have been implemented. Since the minister has made the comparison, we feel Bill 162 should be amended to reflect, at the very least, the revisions made by the Saskatchewan board as a result of these recommendations. The Saskatchewan board has completed the following changes:

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1. That all voc rehab programs be directed towards established and clearly focused employment opportunities; no phantom jobs, no pie in the sky, but an actual job at the end of the rehab program.

2. That formal training-on-the-job programs be established to provide specific training with a direct employment focus. Again, if you are going to train someone on the job, do not let it be cheap labour for an employer, not somebody there at \$4 an hour subsidized by workers' compensation or whatever, but someone who is going to complete a viable course and have a real job when it is over.

3. That training-on-the-job programs be promoted to better inform employers of this option and contain appropriate incentives, obviously offsetting the amounts being paid, to encourage employers to hire injured workers following the training, and even more incentives, because what is to stop them from hiring another injured worker at \$4 an hour and getting rid of the one who just completed the training? It is good business.

5. That referrals for earnings replacement will only be made when the injured worker has completed a formal voc rehabilitation program; in other words, he is deemed.

6. That injured workers be provided for any resulting earnings loss for life, once the injured worker has secured appropriate employment following a voc rehab program.

By attempting to amend Bill 162 in this manner, it would protect the injured workers of Ontario from the 10-year wait the injured workers of Saskatchewan suffered. This will ensure Ontario's legislation retains some of the compassion that was originally envisaged with the passage of the act in 1915. But Ontario should remain the leader, not just a follower.

Therefore, the minister should involve labour and injured workers in a positive and consultative manner and redraft a new piece of legislation that

would lead others to follow our example, instead of us following others' mistakes.

One of the things I brought up in Ottawa at the end of our meeting, and I did not have time to include it in that submission, was a letter from one of the original committee members who implemented the changes in Saskatchewan. He has had 10 years to reflect on those changes, and in the letter—it is the last item contained in your enclosures—he was very positive and up on these proposed changes and expected big things to happen. Their legislation and our legislation now are almost mirror images. He says in the letter that there are two things that bother him. He says, on page 2:

"There remains two serious problems: If the amounts awarded for physical disability are too low, the system becomes unfair, and by far the more serious is the right of the board to deem a worker capable of earning an income after an accident.

"Our whole approach"—when they implemented this—"was based on the actual ability of an injured worker to earn an income. For the board to deem that worker capable violates the whole approach."

The two-tier system in principle is far superior is what he is saying. The flaw in the system is the discretionary power given to the Workers' Compensation Board. That is also what he is saying after 10 years of reflection. There have been very unfair examples where boards have deemed workers capable of doing jobs that had no vacancies or that the worker could not handle or whatever.

I would refer you, and I did not include it, back to the three major problems during their public hearings in 1986 which implemented those changes in Saskatchewan. The committee of review summarized the complaints as follows:

1. "That workers are being deemed by the board to be capable of engaging in work for which they are not qualified without first being given appropriate training."

The documents in your enclosures show that the Saskatchewan Workers' Compensation Board has moved towards closing that. The earnings replacement policy—there are two of them—will state that clearly, where they are closing that gap. They want a specific job at the end of the training.

2. "That workers are being deemed by the board to be capable of obtaining employment at rates of pay that are unrealistic, having regard to the ongoing rates for jobs in question."

This is eight years after the fact. As we sat here today—I sat here since one o'clock—every submission by organized labour or injured workers or representatives of workers has said that deeming is unfair. The evidence in Saskatchewan is overwhelming that deeming is unfair. Why are we doing it in Ontario, one mistake after another mistake after another mistake? A lot of it has to do with the memo Margaret brought up. It is the costing. I firmly believe the only reason we have Bill 162 tabled in this manner in this wording is simply because it is a cost-saving bill in its entirety.

Last night I asked Dave Mackenzie, the assistant to the national director, "How many Steelworkers were involved in the process?" Dave said, "Gee, I will have to check into that." Considering he is from the national office, which would be the office that would have been involved and he knows

Leo Gerard personally and there is a lot of contact, that makes you wonder just who was involved when the minister says "workers," "organized labour" or "labour." We would like to hear from these people or meet them, and we would like to know what they said to the minister versus what was actually implemented. Is there any tie-in to what they suggested to what we actually see before us? I doubt it sincerely.

The other thing that was intimated was that Bill 208 is in some way tied in to the acquiescence to and implementation of Bill 162. We had a discussion on that matter and it was rather revealing, to say the least. I think that sort of action should be stopped. If this bill is no good, it should not be tied in to something that is or may be good to the workers of Ontario.

I think, upon reflection, you will find that you will have to redraft this bill in its entirety. I thank you for your time.

Mr. Carrothers: I want to follow up because you brought in the Saskatchewan change here. I am intrigued by that because one of the core concepts in this is the move to the wage loss and finding some kind of test that you can apply here. As has been pointed out, the regulations that are yet to come will probably have a great deal to say as to how this system works, and that is why I wanted to find out what Saskatchewan is doing.

There are some words in your presentation about "established and clearly focused employment opportunities" being the test which is now applied in Saskatchewan. Is that actual wording from their legislation or is that a paraphrase?

Mr. Stevens: That is a policy. It is the Workers' Compensation Board policy. That is like our threshold.

Mr. Carrothers: That is the statement they are attempting to interpret when they—so I assume what they do is they take a worker who is injured and in going through this process they would determine what kinds of jobs that worker might do by making comparisons to what, then? Existing jobs in the locale where the worker lives?

1650

Mr. Stevens: Correct. They also are regionalizing and decentralizing from the Wascana Rehabilitation Centre, in much the same manner the compensation board here is attempting to do.

Mr. Carrothers: They would canvass the area and find out what kinds of jobs exist and find out if that employee could do it.

Mr. Stevens: That is correct, and they are going to protect the earnings wage loss for life as a worker gets better at what he does. Just because you train someone as a computer programmer—the day that person finishes his training, the average computer programmer may make \$10 an hour, say, but he has entered a new field. He does not earn \$10 an hour. That may be the average, but it is not his actual earnings. His actual earnings may be \$6.75 for the first three years and he may need to be compensated up to \$10, which is what his old position was prior to the injury. But eventually he will make it there and that compensation for the actual lost wages will not be necessary at that time.

But it was being done immediately, as it is done today in Ontario. The

average for such and such a job is such and such an amount. It is incorrect. It does not apply to the worker who has just completed training. That may apply in five years, but he should be watched and what he actually earns should be monitored, I guess.

Mr. Carrothers: So you are saying some experience factor should come into it.

Mr. Stevens: That is right.

Mr. Carrothers: I guess what I was driving at or wanting to see was that if the definition of "suitable and available" could be changed or defined to talk in terms of jobs that exist in the locale of the injured worker, that would then make this the type of process you say is operating in Saskatchewan, would it not? What it may come down to is what those words are going to be defined to mean. When you point to "clearly focused employment opportunities," what they are talking about is existing jobs. The word "phantom" is used—

Mr. Stevens: What they are talking about is that there is no point in training a computer analyst in a five-person village in the middle of the wheat fields when there is not a computer within 100 miles. The thing is to train him to operate the grain elevator or suitable focused employment, focused for where that person is, because it is not realistic to expect a person to move from his friends, from the place he grew up, quite probably. It is not realistic.

The onus should not be put on the injured worker to assume the responsibility of travelling across—Ontario is a fine example—1,000 miles to get a job in Red Lake, say, when he grew up, lived and worked in Toronto. You cannot expect that individual to travel 1,000 miles for a job because there is one available in Red Lake. You have to find something in his locale. It would be reasonable to expect someone maybe to move 100 or 150 miles, but there are costs involved there. Who moves him? There is nothing in the bill that would allow that.

Again, we get back to the discretionary power where they say, "Gee, that's too much money." Your large lobby groups like the Canadian Manufacturers' Association on Bill 208 write a letter to the Premier (Mr. Peterson), request a lunch and get a lunch, because they has clout. Then they can impress upon the Premier to impress upon the minister that quite possibly someone is not going to be funded come next election, or whatever kind of pressure they use to have something changed in the manner they wish. He is not going to do that here, which is the only forum available to injured workers and organized labour.

Mr. Carrothers: But to get back to Bill 162, if that portion of it were working so that an employee in Cornwall would be compared against a universe of jobs, if I could use that phrase for want of a better way to describe it, which would be different from the universe of jobs in Toronto or Windsor—

Mr. Stevens: As it should be.

Mr. Carrothers: —then this thing would, in your view, operate appropriately.

Mr. Stevens: Yes, I cannot disagree with that, but we do not have that. We have to have that.

Mr. Carrothers: I think the point here is that it has not yet been defined. This is why I am trying to draw you out here, to see what kinds of things one might do.

Mr. Stevens: I suggest that would be a positive change.

Mr. Carrothers: If you could do that, then you would feel this type of system might work?

Mr. Stevens: Not as it is worded because we still get back to the nameless, faceless individual sitting at a desk who does not know anything about Cornwall except what is reported to him on a piece of paper. We get back to the situation of someone in Ottawa deeming for someone in Cornwall. What someone thinks is reasonable coming from the environment of Ottawa could or may be totally unreasonable in Cornwall or Gananoque.

Mr. Carrothers: I think that is the point I am making. If we put in the system, or you change this so that the person in Ottawa, if you want, has to look at Cornwall and make the decisions, then the system would work.

Mr. Stevens: The person should be active, should be present and should be in the community.

Mr. Carrothers: Maybe they should be.

Mr. Stevens: Sitting in an office in the vocational rehabilitation area is about the most useless utilization of qualified people that the compensation board has.

Mr. Carrothers: So in conjunction with this, you might even want some more decentralized decision-making?

Mr. Stevens: Maybe not so much decentralized, but mobilized.

Mr. Carrothers: So that they come to the community sometimes; okay.

Mr. Chairman: Mr. Stevens and Mr. Ruggio, thank you very much for your presentation to the committee.

The next presentation is from the United Steelworkers of America, Local 2514. Is Mr. Halladay here? Good. Would you take a seat at the table, Mr. Halladay and make yourself comfortable. Are you by yourself?

Mr. Halladay: No, I have my staff representative here and some other representatives. John is just here from labour board hearings.

Mr. Chairman: Some of these faces we recognize.

Mr. Halladay: I just inform you they are not going to answer any questions at all.

Mr. Chairman: Mr. Halladay, whenever you are ready, you can introduce your colleagues.

UNITED STEELWORKERS OF AMERICA, LOCAL 2514

Mr. Halladay: First, I would like to sincerely thank the committee for providing me with this opportunity to appear today. My initial request for time was denied, but I learned a week ago Friday from the secretary's office that I had in fact been given this half-hour today. That was enlightening and I guess it just goes to show that there is a need for more hearings and a chance for more people to express their views. With that I would like to initially tell you a little bit about myself.

I am a full-time union president presently serving my second three-year term. I have also served two terms as vice-president of the local. One of my responsibilities for the past 10 or 12 years has been to assist members with concerns they have had with Workers' Compensation Board claims. Since we have a membership of approximately 300 and work in the can-making industry, I have been aware of quite a number of injuries subsequently involving WCB claims. Some of these claims had to be taken to the appeals level before the member was allowed benefits. Because of all this, I have become familiar with the Workers' Compensation Act.

Over these past few months, as I became more and more familiar with Bill 162, I started to realize that I certainly was not alone in my concern about the negative aspects of the bill. Even people I have known over the years who have not necessarily had that much to do with or been that directly involved with WCB matters were suddenly commenting on the additional problems Bill 162 would bring to a system that is already inadequate in so far as the injured worker is concerned, I suggest.

I think this is the first piece of legislation associated with the Ministry of Labour where I have seen so much interest and concern, even to the point where a large percentage of my membership is asking questions. These questions include, "What can I do to have the bill withdrawn?" It is no secret that we have been submitting cards to that effect signed by a great number of our members.

Without exception, I am encouraging my fellow workers to express their concerns to their member of provincial parliament and/or Premier Peterson.

1700

I would just like to list a few of the concerns which I personally have with Bill 162, and I would also like to say that my concerns are for the most part shared by my membership and other people in the labour community I associate with. You already know how the district 6 director, Leo Gerard, feels, and my staff representative, John Perquin, on my right, who already made his presentation on March 6. Those representatives of the United Steelworkers of America feel, as I do, a need to elaborate on the concerns that many of us have.

Let me talk for a few minutes about rehabilitation under Bill 162. One of the things mentioned or recommended in the Minna-Majesky report was that any worker who sustains a serious injury in the workplace shall have the statutory right to all rehabilitation required by the worker. The bill says that every injured worker who has not returned to his or her pre-injury employer within six months will be offered a vocational rehabilitation assessment; no guarantee of retraining or rehabilitation, just an assessment. The plain and simple truth here is that if the board determines rehabilitation is not necessary, it will not even be offered. This is definitely unacceptable.

Minna and Majesky also recommended that a worker have the statutory right to return to his pre-injury employer. However, when you look at Bill 162, you soon see that this will not be the case. First, the reinstatement policy of Bill 162 does not apply to the construction industry, which has in excess of 300,000 workers in this province. It then goes on to exempt the employers who regularly employ fewer than 20 workers. That will look after a fair number of workers as well. The exemption of workers also includes people working in the bush, in the farming industry.

I think the most insulting thing about this part of the bill includes a category, "such classes or subclasses of employers and workers as may be exempted by the regulations." That, in my opinion, leaves it wide open to just about anyone. It certainly gives the board, at any time in the future, the opportunity to determine a class of employers who are exempt from re-employing its injured workers. That group of workers will not have any rights at all under this section.

I feel that every injured worker should have a statutory right to re-employment with the pre-injury employer, and that right should also ensure a standard of living that is no lower than it was prior to the injury. If it is not possible with the pre-injury employer, then a statutory right should be in place that would provide the injured worker with the rehabilitation and vocational training that is needed to bring him or her back to the standard of living that was in place before the injury.

The second part of the bill I would like to mention is the dual award system. As the minister has pointed out, this will replace the "meat chart," which we have all been so unhappy with over the years. However, I think you have to agree, as you examine the two components of this dual award system, that it does not in fact eliminate the meat chart.

Let me deal with the first part of the system. The lump sum payment is supposed to cover noneconomic loss, referred to by the minister as loss of amenities in life. Although, granted, it is probably the only guaranteed payment under the system, it represents much less than the present pension system does and, although the minister will deny it, it is based on the meat chart. It states quite clearly that the board will have the power to establish a ratings schedule to determine the degree of permanent impairment for specific types of impairment. You can call it a ratings schedule if you like, but to me it is still a meat chart, used to determine the degree of permanent impairment of a worker.

The second part of this award system is the monthly disability pension, which presently reflects a disability for life. We already know that this monthly amount is supposed to replace earnings lost as a result of an injury for which we know the disability is permanent. Under the new legislation, the minister has said you are going to get 90 per cent of the net average earnings lost because you can no longer return to your former work, and this will be at the discretion of the board. After two years, five years or any time the board considers appropriate, it could be subject to review, and there is no guarantee anywhere in the legislation that the basis of the calculation will be on the job the worker actually obtains.

If the award were based on the actual loss the worker suffers, it really would not be all that bad, but it is not. Under the new legislation, the award will be based on what the worker is deemed capable of doing after the injury. In other words, whether or not the worker has another job or even an offer of another job, the board will determine what he or she is capable of doing. So,

in reality, the board creates a phantom job and tells the worker that this is what he is capable of doing, whether or not the job actually exists. To top this off, the benefit is established only up to the age of 65.

I suggest the board now has discretionary powers in two instances. The board determines what a worker is capable of doing, not what he or she is actually doing, and the board may determine that the benefit would be paid up to the age of 65, as it considers appropriate. This means, in my opinion, a review can simply do away with it at any time, wipe it out. Even after a permanent pension has been established, if the worker cannot return to work, a supplement for 90 per cent of net earnings will be denied, if the board determines the worker is capable of doing something that pays more than the pre-injury job.

This would be fine if the job existed, but again, under Bill 162, it does not have to be available to the worker to have the supplement denied. I have read of a couple of examples that deal with that. I have not gone into them because I am sure you have already been made familiar with them. They are real-life cases, they do exist.

In summary, I would be one of the first ones to say, after these years that I have been associated with WCB matters, that there is no doubt about it: we desperately need changes to the system. Unfortunately, the ideas that the minister has to make the system better are very much different from those that we share in labour. I believe the ideas that we have would definitely make the system fairer and more realistic. But I am sure, and this comes from personal experience that I have just gone through in the last couple of days, that the minister's ideas are in fact shared by many employers.

I believe it was because of the pressure put on the government to reduce the costs of WCB for employers, and God knows they are high, that this bill was in fact created. I have always said, and I will continue to say, that if employers spent more money on preventive measures to reduce injuries on the job, then their high cost of WCB premiums would be subsequently lower. That is only common sense. At least, this is our opinion and we will certainly implement efforts. So let us continue to strive to reduce accidents at work, through good health and safety measures and good legislation, thereby requiring employers to make the workplace safe or a safer place to be in. This is what we are attempting to do at my present place of employment; we are working very hard at it.

I would like to conclude by saying that Mr. Sorbara and his ministry have made a very large number of people extremely happy with the introduction of Bill 162.

Mr. Perquin: Unhappy.

Mr. Halladay: I beg your pardon. Unhappy. Thank you.

Mr. Dietsch: A Freudian slip.

Mr. Perquin: He shook me up.

Mr. Dietsch: You think he shook you up.

[Laughter]

Mr. Halladay: We need a pause for laughter here, I guess. Anyway, I

will just repeat that I am sure—I am not sure; I know that the introduction of the bill has made a lot of people very unhappy. As I said initially, it has probably had a greater impact on the working people of this province than any other single piece of legislation in the past. I really believe that. Even though we have a considerable amount of time to wait until the next election, I think Mr. Sorbara and, more particularly, Premier Peterson should take a long, hard look at this bill before they decide to finalize it. If they decide to go ahead and implement the bill, then I suggest that the workers—and I can certainly speak on behalf of the ones with whom I am associated—will very well express their concern when we have the next provincial election.

1710

Mr. Chairman: Thank you, Mr. Halladay. Mrs. Marland.

Mrs. Marland: Mr. Halladay, would you just take a moment to elaborate? You just said that from what you have learned and experienced, I think—one of those two words—in the last two days, you are more aware of your concerns being shared by the employers.

Mr. Halladay: The employers? Yes. I can elaborate on that. Just prior to leaving the plant where I represent the workers today, I spoke to two different representatives from planning. One said, "Where are you going?" I said, "I am going down to Queen's Park to face the standing committee on Bill 162." "Good bill," he said. I said, "Well, do you know something about it that I do not know?" He quite frankly admitted that he did not know very much about the bill, but he had been told by his boss, I guess, that it was going to save money and it was a good bill and that is all he knew.

I, quite frankly, did just a little more research than that with the help of my staff reference people with whom I associate, and I would suggest that I know a little bit more about the bill than this particular gentleman I am talking about. That is not to take anything away from him. He is a fine person and a good supervisor, but all I am saying is that management at any particular level seems to think it is a great piece of legislation and that in itself makes me suspicious. Does that answer your question?

Mr. Dietsch: Not the way she wanted.

Mr. Halladay: I did not think so.

Mrs. Marland: No. I thought you said that the employers were now seeing that the bill was not what it intended to be; but in fact, from what you have just said, perhaps the problem is that the general public per se really, at this point, employers and employees alike, does not know enough about the bill and some of this is coming to the surface through the process of these hearings, obviously.

The other thing that I think is happening through the hearings is that with all the preconsultation that we were told about, in fact, as the person before you said this afternoon, they do not know who has been talking to whom either in the unions or in the industry—employer side either.

Mr. Halladay: The one thing I would like to stress is that when I point out that there is a lot of interest in this particular bill, all I mean is that with other pieces of legislation in the past, or even, I suggest, things to do with our very own contract, the membership, quite frankly, was not usually that interested. But I will give you that much; the word gets

around and they start asking questions, "What is this Bill 162 anyway?"

So with the bit of knowledge that I have been given working with the people I have already mentioned, I try, to the best of my ability, explain what is going to happen if this bill is implemented. I think you would agree that if I point some of these things out to my membership, being my concerns that I have just pointed out to you here today, then obviously the first thing they are going to say is, "Well, my God, then we have to try and stop this bill," because I do have a few people in my membership who are on some percentage of disability.

As a matter of fact, had I had the time to prepare a couple of examples, I would have loved to have taken a couple of the guys in my local and given you information on them as to what is happening now and try to compare that to what would happen under the new legislation of Bill 162.

But all I am saying, whether these people were too well informed or not—and I do not think it is because anyone talked to them and said, "Hey, you know, get involved in the protest," or something like that. That is not the case. These people were asking for cards that they could sign. I returned those cards to my staff representative and they will be mailed in. They have shown more interest in this particular piece of legislation than, as I say, any that I have experienced in the past, including some of our own.

Miss Martel: I will be brief. I want to go back to page 4 where you talk about the exemptions under the reinstatement provisions in the bill. You mention construction workers and establishments of less than 20. You pointed out that you felt the most insulting thing was the category that allowed the board to exempt any classes or subclasses in the future. Why would you think the Minister of Labour (Mr. Sorbara) in this province would give the board that kind of right to exempt any group in the future?

Mr. Halladay: It seems to me that the bill suggests that discretionary power. I am not suggesting they would create these groups but, darn it all, when you give that kind of discretionary power to any particular group, then I suggest that some pretty weird things may in fact happen.

Miss Martel: We already have 25 per cent of the population exempt under the first two categories you mention, and you have not counted all those people as well who have worked less than one year of continuous service.

Mr. Halladay: Yes, I have not included that.

Miss Martel: Now he has given them the option of excluding any class in the future. In my opinion, if you are going to put something into place that protects people, then you protect everyone. You do not start off by excluding a quarter of the population, then allow for future exclusions. Why would we be looking at those kinds of exclusions and those kinds of numbers of workers in the province if the purpose of the bill is to protect workers and provide for real reinstatement rights?

Mr. Halladay: Again, I suggest that with that type of legislation in place it does not necessarily protect, certainly no more than it protects now, and that is a problem with the bill. You have just told me that at least 25 per cent of the working class is exempt from protection. If at any time in the future the government can look at any particular group of workers and say it should not be included either or should be exempted—I am just saying I do not think any group should have that kind of discretionary power.

Mr. Wildman: I am very happy that you were able to get standing before the committee even though this committee has denied standing to many other groups. The reason I am happy is that you are so reasonable. You have indicated that when you talked to your membership about what this bill will do, as you understand it, it came to the conclusion that the bill must be stopped. Was that your understanding of the purpose of this committee hearing: that if you could come before the committee and make a reasonable presentation on behalf of your membership, the members of the committee would move to stop this legislation?

Mr. Halladay: I am a firm believer in this: With any issue, I suggest that if enough people are concerned about it, rather than attempts being made to reconstruct the bill or, to use a loose phrase, tinker with it and try to fix it in some way, it might very well be withdrawn. I would hope it would be.

I am afraid I have to admit that probably only two weeks ago I saw a video of Mr. Sorbara being interviewed by one of our retired staff reps. Mr. Sorbara was saying, plain and simple: "This bill is in place, gentlemen. It's there and it's going to stay there." That type of thing disturbs me, because here I am looking at the possibility of coming to a committee and explaining my concerns and I hear the minister say: "You can explain or be as concerned as you like, but the bill is in fact in place and it will be implemented. It will receive royal assent." It is very discouraging to hear those kinds of comments from our Minister of Labour.

Mr. Wildman: I would find that awfully discouraging, too, and I would hope that your presentation, along with all the others from injured workers' groups and organized labour that have asked for this bill to be withdrawn, will be heard by the members of this committee; that in fact all members of the committee will not be swayed by Mr. Sorbara's statement that this bill will go ahead without change.

Mr. Halladay: I certainly hope so.

1720

Mr. Chairman: Mr. Halladay, I thank you and your colleagues for your presentation to the committee today. We appreciate it.

The next presentation is from the Canadian Auto Workers, Local 1915. Is Gary Lucas here?

CANADIAN AUTO WORKERS, LOCAL 1915
PEEL AND AREA COUNCIL

Mr. Ouellette: We have a slight change in venue. My name is Ken Ouellette and I am here representing, as well as CAW Local 1915, an organization in the Peel county area, CAW Peel and Area Council, representing some 10 locals of the CAW in the Peel region. I am president of the CAW Local 1535 and a member of the national executive board of the CAW Canada.

Mr. Chairman: Would you introduce the person on your left?

Mr. Ouellette: That is Gary Lucas, who is a full-time benefit rep with CAW Local 1915, and on my right—I believe this gentleman has been here before—is Jim Crocker, who is a resource person.

Mr. Chairman: That is why I asked for the person on your left.

Mr. Crocker: Part of the family.

Mr. Ouellette: Not being entirely familiar with the process that we are involved in here today, we might have been hesitant under normal circumstances about taking an active role in these proceedings. The importance of workers' compensation to us and our members, however, has prompted us to be involved.

It is our intention to keep our comments concerning the bill as simple as possible, given the complexity of the subject matter. We think it is important to tell you that we believe this bill is a bad bill and it should be stopped. It seems to reflect a very cynical attitude towards workers who are injured on the job and, indeed, represents a real threat to their future economic security.

We also feel it is important to impress upon you that for the vast majority of workers injured on the job, the loss of our ability to earn a living does much more than threaten our economic security. Rightly or wrongly, how we feel about ourselves, intangibles such as self-respect and dignity, are directly linked to our ability to earn a living.

The first area of concern with Bill 162 we wish to address deals with what we see as a worker's right to return to a job after a work-related injury. This would seem to be an area in which all sides concerned with the problem could find agreement. Unfortunately, this bill simply misses the mark and certainly does little to recognize the concerns of injured workers. Our understanding of what is contemplated by the wording of Bill 162 does not entrench a worker's right to return to his previous place of employment. The employer has only to offer the employee the first suitable job that may become available.

In addition, this obligation has totally unacceptable time limits. These time limits restrict those workers who have experienced serious injuries resulting in permanent disabilities from taking full advantage of what little benefit may be provided. Also, the bill does not seem to consider seniority rights when dealing with this issue, nor does it provide any right to appeal should a worker believe his employer has not lived up to his obligation under the provisions of the bill.

In our opinion, the aforementioned clearly indicates the inability of this legislation to address the important question of an injured worker's right to a suitable job. When you consider that the bill also excludes all the workers in Ontario who are presently injured, and exempts two key categories of workers who may need this protection more than most, we find it impossible to believe that anyone would honestly think Bill 162 represents a meaningful response in this area of concern.

The issue of rehabilitation would seem to go hand in hand with meaningful reinstatement rights. Since Bill 162 does not supply the latter, perhaps we should not be surprised that there is no statutory right to rehabilitation. It is very difficult for us to believe that not only does this bill not supply a right to rehabilitation, it also restricts eligibility to only those workers on temporary benefits. This would appear to make rehabilitation available only for a maximum of 18 months after the accident, and in some cases this period could be much shorter. If one were to try to argue that there is some improvement in the area of rehabilitation under this

bill, that argument would surely fail in light of these unacceptable time limits.

We mentioned at the outset our feelings that Bill 162 represents a real threat to the economic security of injured workers in this province. We see an end to an inadequate but secure system of permanent disability pension. This would be replaced by a dual award system consisting of (1) a "lump sum payment" for pain and whatever permanent damage or "impairment" might have been suffered, or so-called noneconomic loss, and (2) "wage loss benefits" which are supposed to compensate for an injured worker's inability to earn a living roughly equivalent to his pre-accident earnings.

On the surface, this system would appear to be an improvement since it seems to recognize two separate and important ways in which an injured worker, in fact, suffers a loss. One would naturally assume that this expanded view would generate a more adequate level of compensation. As we struggle to understand and interpret what these changes actually mean, however, it becomes clear that they do not represent improvements. They might be more accurately described as a cynical, if not dishonest attempt to disguise serious reductions in compensation payments to the workers of this province.

To be a little more specific, the lump sum payment represents a major reduction when compared with the amount the current pension system would generate in the same circumstances. In addition, this benefit is the only portion that, in our view, an injured worker can actually count on receiving. This will have the effect of greatly increasing the financial insecurity in the life of an injured worker. There will be little hope for the future since only two reassessments of this benefit would be allowed, with little chance of success, since only "significant and nonanticipated" deterioration of a worker's condition will be allowed. Once again, there appears to be no right of appeal should the worker disagree with his assessment.

The second level of this new award system is even less impressive than level 1. It is our opinion that few workers will actually be eligible to receive this benefit. The amount payable appears to be 90 per cent of the difference between what the worker earned before the accident and what the board believes he or she is capable of earning at nonexistent or phantom jobs. This will result, in our opinion, in many workers being denied this benefit. Even if some workers are lucky enough to receive this benefit, it will be reviewed regularly and will only be continued as long as the board considers it appropriate.

Under the present system, a pension is payable for life. Under the proposed system, any compensation benefits are terminated at age 65 and replaced by a retirement payment based on 10 per cent of the value of any wage loss payments. Since we believe that few workers will be eligible for wage loss payments, we also believe few workers will be eligible for retirement income. This will make it impossible for injured workers to prepare for retirement since, to say the least, they will have no idea of what they might expect from the board.

Our final concern relates to the fear generated by our belief that this legislation was written for employers and not for workers. Without the input of legitimate worker representatives, it is very difficult to be sure what all the language actually means. We are concerned that the employers, who obviously have had more input into this legislation than workers, are busily preparing to use this legislation to their full advantage.

We are concerned, for instance, about the meaning of language in the bill which seems to indicate that payments in excess of 90 per cent of net earnings could be prohibited. Does this mean that where we have agreements with employers to pay a top-up in excess of 90 per cent of net earnings, this bill could prevent this from continuing? Is the government assisting employers in achieving concessions they are not able to achieve in collective bargaining?

In summary, there is little to recommend Bill 162 to the workers of this province. We are aware that the Minister of Labour has made statements which may change this bill as it presently exists. We have not tried to address the minister's statements since we did not have adequate detailed information when we prepared these comments.

It is our opinion, however, that amendments will not correct Bill 162 since it is fundamentally flawed and should be discarded. If the government wishes to make meaningful change to the legislation affecting injured workers in this province, then there should be serious consultation with those groups that actively represent the concerns of injured workers.

1730

The Ontario government would better serve all parties if it scrapped Bill 162 and referred all compensation matters to the committee setting up the green paper, thereby allowing a thorough review by all interested parties.

The position of the Peterson government to limit the input to the hearings on Bill 162 is certainly not the answer. The sheer volume of requests to stand before this committee should serve as an indicator to this government that major concerns with Bill 162 exist.

On behalf of our council, and as I said, that represents about 13,000 men and women in the Peel area, I would like to thank you for the opportunity to address you today.

Mr. Chairman: Thank you, Mr. Ouellette. Mr. Wildman had a question.

Mr. Wildman: A very short comment and question. As you may know, in relation to your last paragraph, earlier today a motion was put in this committee that we extend the hearings so that all groups that had applied for standing before the deadline should have the opportunity to appear before this committee in Toronto. That motion was defeated.

It has been suggested, since, for instance, Mr. Crocker has been before the committee before, that we do not really need to extend hearings so that other local members of the CAW, for instance, should be able to put their views forward to the committee. We have had that suggestion with Mr. White, who is sitting at the back as well, that because he has been before the committee before, other local unions from the Canadian Union of Public Employees should not necessarily have to come before the committee. How do you respond to that?

Mr. Dietsch: It is not what I said.

Mr. Wildman: I did not say you said it, but since you have indicated you did, go ahead.

Mr. Dietsch: Maybe your tongue is faster than your brain.

Mr. Ouellette: Do I get a chance to answer it?

Mr. Wildman: Not only does he not want to give groups a chance to appear before the committee, he does not want to give you the chance to answer the question.

Mr. Ouellette: I can only tell you that the reason we are here today as a council representing 10 various locals is that the majority of the locals in the council put forward requests to come before this committee and the bulk of them were turned down. That is why we put all of this together into one.

Since that time, some of those have been asked to fill in spaces with as little as a couple of days' notice. I really do not think, on an issue that is this important, it is really fair or appropriate to call somebody up two days before a meeting and ask him to submit a brief.

Mr. Wildman: Do you think that all locals have something to say related to their particular circumstances?

Mr. Ouellette: All of the locals that are indicated here wanted to participate in this. If they did not want to participate in this, their names would not appear on this. Most of them applied for recognition. Most of them applied for permission to make a presentation before the committee.

Mr. Wilski: I got a call yesterday at 11:30 saying that I could come before the committee today. That is not enough time to prepare anything.

Mr. Wildman: So that is why you combined the thing.

Mr. Wilski: We combined it all together.

Mr. Chairman: Mr. Ouellette, I wonder if you could clarify something for me. On the third-last page of your brief, the last paragraph, you are talking about the 90 per cent of net earnings being prohibited. I do not know where you are coming from on that. I do not know what you are referring to there. Does anyone know?

Mr. Lucas: Our concern is that we have some employers who pay in excess of the 90 per cent of net, and while there is nothing specific that we can find under the bill or in the existing legislation at the present time that would prohibit that from continuing, there is some language, such as the movement of section 54 into the bill as well as new wording in section 24, which seems to reflect maximum amounts payable; also in the reinstatement provision where they talk about the fact that collective agreements could be abridged; the issue of seniority rights not being dealt with; all of this together has given us some concern.

If this committee is going to say to us we need not be concerned about that, we would like to hear that, in fact.

We have not found anything specifically, although we have experienced some problems with some employers recently, coincidentally, with some employers saying to us that they are in fact changing long-standing practices regarding payment of amounts that we believed were part of our agreements; that they are no longer going to pay those amounts but 90 per cent of net, not 90 per cent of gross. We have a concern there. If you are telling us that we should not be concerned, we want to hear that.

Mr. Chairman: I do not hear anybody telling you that.

Mr. Lucas: We have ways and means of dealing with these problems within our structures. We would just hate to think that our best efforts would go for nothing because there is something happening within the legislation that we do not foresee.

Mr. Carrothers: Is there anything specific in this legislation that you can point to?

Mr. Lucas: We cannot pinpoint any specific thing other than the overall thrust.

Mr. Carrothers: I guess I was as confused as the chairman, because I had not sensed in this any thrust to overturn collective agreements, apart from the one you have identified to do with the reinstatement, which presents a problem. There may be things we can do to make that work better, but with that one exception, I had not sensed anything. That is why I was surprised at that comment. Mr. Chairman, you pre-empted my question.

Mr. Ouellette: We find it an alarming coincidence that at the same time as this bill is going through, employers who for 20 years have paid on 90 per cent of gross earnings suddenly tell us that by law now they have to pay only 90 per cent on net. The thread that seems to run through that is the one that also links up their ability to circumvent the collective agreement in the area of reinstatement. It seems they feel they have that right to circumvent the collective agreement in whatever area they deem appropriate within the legislation.

When you take it from the consideration that we believe, as we said, that fundamentally the bill itself was written to save the employers money, not from the standpoint of workers, you can see why we are just a little paranoid in that regard.

Mr. Carrothers: I find that comment interesting, though, because we have had so many employers come before us telling us we have written this bill to bankrupt them. I have some difficulty.

Mr. Crocker: We can count on you to help us scrap it, then? Is that what you are telling us?

Mr. Dietsch: I was intrigued by some of the comments. I want to be clear in my understanding that your view is that your collective agreement should take precedence, and that is basically the bottom line in what you are saying.

Mr. Lucas: That is correct.

Mr. Chairman: Mr. Ouellette, thank you and your colleagues for your presentation.

Is the Canadian Union of Public Employees, Local 114, in the room? Could they come forward, please? Take a seat and make yourselves comfortable.

Miss Martel: Mr. Chairman, I will be very brief. I apologize to CUPE. I know we are running late and I thank them for being here. I do want to move a motion. I am sure this will not take a long time. I was intrigued by what Mr. Halladay had to say concerning the minister's comments on Roger's Cable.

I move that this committee request that the clerk obtain from Rogers Cable either a copy of the video or a written transcript so that all members of this committee can hear what the minister had to say in this regard, to know exactly where we are heading as a committee and if we are going to be able to have any amendments put to this thing or not.

Mr. Carrothers: Just for clarification: to get the transcript?

Mr. Chairman: Yes, either to get the video or a transcript of it.

Mr. Carrothers: I just comment on the time for witnesses and the viewing, if we do it on our own time. Otherwise, sure.

Mr. Chairman: The motion simply asks that a videotape or a transcript be obtained. At that point, the committee can decide what to do with it.

Mr. Dietsch: If you have it in writing, Mr. Chairman, I would be happy to hear it read back so I am clear on what it does say.

1740

Mr. Chairman: Do you wish to have it read?

Mr. Dietsch: Yes, I would like to have the motion read, please.

Clerk of the Committee: That this committee request that the clerk obtain from Rogers Cable a copy of the video of the labour forum wherein the Minister of Labour was interviewed regarding Bill 162. If it is not possible to obtain a copy of the videotape, then she obtain a written transcript of the interview, so that this committee might peruse its contents.

Mr. Chairman: Is the motion understood? Are you ready for the question? Mrs. Marland.

Mrs. Marland: I know we will support the motion. I think the intent would be that we not take time away from the depositions before the committee and that we would be willing to meet at a quarter to nine or a quarter to two or at some time agreeable to the committee to see it, and not interrupt the process we are scheduled into.

Mr. Chairman: All those in favour of Miss Martel's motion please indicate. Opposed?

Motion agreed to.

Mr. Chairman: We have before us now Canadian Union of Public Employees, Local 114. Am I correct in that regard?

Mr. Kirkby: That is correct.

Mr. Chairman: Would you proceed, please? You have half an hour, if you choose to use it.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 114

Mr. Kirkby: My name is Jack Kirkby and I am a representative of the Canadian Union of Public Employees. I am here today on behalf of Local 114 of CUPE; that is in the borough of East York where we represent approximately 300 workers, both inside and outside. The person sitting alongside me is Jack White, who I understand needs no introduction. Mr. White is the person in our union who handles most of our workers' compensation problems.

Over the past five years, beginning in 1984, my local members have suffered 1,050 lost-time accidents. We are therefore most concerned with the Workers' Compensation Board and in particular with Bill 162.

In this submission, I will focus on just two aspects of Bill 162, primarily because of the short time granted for each presentation. Those two areas are section 45a as it relates to wage loss and deeming, and section 45b, the reinstatement and re-employment provisions of the bill.

Since November 1987, the Workers' Compensation Board, under subsection 45(5), the section dealing with supplements, has been deeming workers capable of performing jobs of all descriptions that they may have no training for, jobs that do not exist or jobs that are only available in other towns and cities, all of this to avoid granting the worker a supplement.

With the wording of Bill 162, where it states in clause 45a(2)(b), "the net average amount that the board considers"—I underline that—"that the worker is able to earn after the injury in suitable and available employment," we fear this will allow the board to deem any worker, who may have some major disability, capable of some work and that worker may or may not be given consideration under the wage-loss provisions. The board could take the position that no one is totally disabled and is therefore capable of some form of work, and thus may not be entitled to any wage loss or at least very little.

It is important that we step back to June 12, 1975, and review the amendments introduced by the then Minister of Labour, John MacBeth. In announcing the amendments, Mr. MacBeth said:

"The board has in recent years been paying additional compensation by way of pension supplements to workers with permanent disability where the clinical percentage of disability based on medical evaluation did not fully recognize the worker's actual earnings impairment. The act will now be amended to clearly provide for higher levels of benefits, up to 75 per cent of earnings, for those permanently disabled workers whose real earning capacity is seriously impaired as a result of their accidents."

The interpretation by the WCB, July 1, 1975, through November 5, 1987: The WCB adopted a policy in January 1976 which took the amendment into account in a half-hearted and inconsistent manner.

One adjudicative direction, for example, indicates a pension should be discontinued after six months if it is not indicated that it will help in successful rehabilitation. The very next point provides for payments to workers who "will not likely ever obtain suitable employment."

In the Legislature later in the year, a WCB administrator, Mr. Kerr, explained that the supplement was to pay for the actual wage loss. The

Minister of Labour, then the Honourable Bette Stephenson, noted in response to a case scenario:

"It is my understanding that indeed the situation is covered; that if an individual is unemployable or cannot find suitable employment at that time, that supplemental pension can be raised to the level of full compensation, and that in that consideration socioeconomic factors are considered as well."

I suggest that for reference you see appendix IV of the Legislature of Ontario Debates, Tuesday, December 14, 1976.

The current board policy for subsection 45(5) bears a remarkable resemblance to the economic and rehabilitation provisions of Bill 162.

The Minister of Labour, the Honourable Greg Sorbara, has continually informed us that Bill 162 will not contain the element of deeming workers at phantom jobs. It would appear that this belief is based on the provisions that a worker's wage loss must be determined having regard to "suitable and available work."

It must be pointed out that the current legislation also contains reference to suitable and available work. The present section also clearly states that the board must compare actual pre-accident and post-accident earnings. Despite this, the Workers' Compensation Board exercises discretion in such a way as to deem workers' earning capacity from jobs they do not have.

The present policy serves one positive purpose. It warns us of what to expect under Bill 162. The present experience has convinced injured workers and their representatives that Bill 162 must not become legislation if the compensation system is to retain any integrity or respect for the present administration.

Section 54b gives my union great concern. We read subsection 8 and compare what we have negotiated over the years in the way of protection for workers returning to work after illness, compensation or because of age, and from our reading of the bill, we may fall short of providing better coverage than the bill provides.

Our agreement provides for no loss of seniority, payment of full wages and benefits and a guarantee of a job suitable to workers' capabilities but not necessarily at the rate of pay earned at the time of injury.

We suggest subsection 8 is much too broad and leaves too much open-ended to interpretation.

Ladies and gentlemen of the committee, you have been charged with a great responsibility. You have heard and will continue to hear presentations made to you by labour groups, employer groups, injured worker groups and others. You must examine and evaluate all the views expressed. That examination cannot be taken lightly, nor should party politics play a role in your deliberations.

Your job, as I would see it, is to make recommendations back to the minister, bearing in mind all of the positive and negative aspects of Bill 162 and the effects it can and will have on injured workers in this province. I suggest that if you do that, you will agree with labour and scrap the bill. Thank you.

Mr. Chairman: Thank you very much. Are there any questions from members of the committee for Mr. Kirkby or Mr. White? Miss Martel.

Miss Martel: I will be very brief. On page 4, you talk about the deeming provisions that are already in current board policy in subsection 45(5). I have been surprised that some members of this committee did not know this was happening. It has been in practice actually since November 1987. But in any event, even if in the proposed legislation we could change the legislation so that deeming was not allowed, the practice is still occurring now at the board and the Minister of Labour (Mr. Sorbara) has done nothing about that, nothing to change that.

I guess my question to you is, even if we can get this bill scrapped and do away with deeming under the proposed changes, what then do we do about the current practice of deeming that goes on now under pension supplements in subsection 45(5)?

Mr. White: There is currently a green paper committee. Labour currently has some four members sitting on that committee. We are certainly looking at board practices and board policy and will continue to do that. It is unfair that we allow the Workers' Compensation Board to treat injured workers in that manner. I am surprised actually that this government has not taken the kind of action that is necessary to put a stop to that practice. I would highly recommend that certainly that should be the approach taken by this government.

Mr. Chairman: Are you a member of that green paper committee?

Mr. White: No, I am not; just an adviser to the labour members on the committee.

Mr. Chairman: Perhaps it has gone by me and it has not stuck in my head, but I think I and perhaps other members of the committee would be interested in seeing the mandate for that committee just to see if there are any references to the kinds of matters we are dealing with in this bill. Perhaps other members know more about it than I do, but I am sure that is available and we could get it from the Ministry of Labour. Would members be interested in getting that?

Miss Martel: Members on that committee, as far as I am aware, were meeting last night to discuss broad policy issues. I do not know if that is public information or if it was just consultation among the members.

Mr. Chairman: Perhaps we will try and get a broad idea of what the mandate of that committee is.

Miss Martel: I was just going to say that members involved in that paper were meeting last night, as far as I was aware, to discuss some of the broader policy issues they will look at, but I do not know if the minutes of that or the contents are available to the public. I have no idea.

Mr. Chairman: Thank you very much, Mr. Kirkby and Mr. White for your presentation.

I remind members of the committee that tomorrow morning we meet in the Ontario room of the Macdonald Block. We have been pre-empted from this room

for one day so we will not be meeting here tomorrow. We will be in the Ontario room at the Macdonald Block.

Thank you very much for your co-operation today. We are adjourned until tomorrow morning at nine o'clock.

The committee adjourned at 5:52 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT

WEDNESDAY, MARCH 22, 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the United Steelworkers of America, Peel-Halton Area Council:

Hilker, David, Staff Representative

Urh, Josephine, President, Local 14873

Murray, Gabriella, Local 14873

From the Canadian Auto Workers, Local 396:

MacIntyre, Linda M., President

Crocker, Jim, Workers' Compensation Board Co-ordinator

Nalli, Luisa

From the Canadian Federation of Independent Business:

Andrew, Judith, Director of Provincial Affairs, Ontario

Botting, Dale, Executive Director of Provincial Affairs

From the Ontario English Catholic Teachers' Association:

Lennon, Eileen, President

Blair, Richard, Legal Counsel

Coté, Michael, First Vice-President

From the Canadian Auto Workers, Local 1967:

De Carlo, Nick, President

Crocker, Jim, Workers' Compensation Board Co-ordinator

Burns, Tom

From the Canadian Printing Industries Association, Toronto Branch:

Heron, Richard J., Chairman, Intergovernmental Affairs Committee

Peppin, Murray C., Operations Manager

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, March 22, 1989

The committee met at 9:08 a.m. in the Ontario Room, Macdonald Block.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The standing committee on resources development will come to order.

The first presentation is from the United Steelworkers of America, District 6. I have David Hilker down as the first presenter. Make yourself comfortable. We are not terribly formal in these matters. Proceed. You have half an hour. You can use the half hour to make the presentation or reserve some of the time for an exchange with members of the committee.

UNITED STEELWORKERS OF AMERICA,
PEEL-HALTON AREA COUNCIL

Mr. Hilker: Good morning. My name is David Hilker. I have been on staff with the United Steelworkers for 24 years. I am here to represent the Peel-Halton area council of the United Steelworkers of America, and we welcome this opportunity to present this brief on our opposition to the proposed changes to the Workers' Compensation Act.

The steelworkers in the geographical area of Peel-Halton represent approximately 5,000 working men and women employed in about 90 different workplaces, which vary from office environments to heavy structural steel fabricating plants. Each day many of our members are hurt or injured on the job. Unfortunately, many of them face an uncertain economic future due to their workplace accidents. It is for these reasons and on behalf of those workers that we welcome this opportunity to speak and present this brief to you.

In its present form, this bill cannot be made into a good piece of legislation by simply amending certain sections only.

The dual award system: In his opening statement, the minister made reference to the fact that this system should provide workers with fairer compensation. After reviewing this section, I have come to the conclusion that many of our workers will be receiving less.

Noneconomic loss: This particular section allows the Workers' Compensation Board to discriminate against older workers by paying them much less, specifically because they are older. It does not stop there. The proposed changes place a ceiling on the actual payout whereby a 25-year-old worker who is totally disabled would only receive \$65,000 maximum. Our experience has been that most injured workers who are assessed receive the standard 10 per cent, and this figure is showing a downward trend.

The noneconomic loss award: This clause has left us with the impression

that the WCB's policymakers wanted subsection 45(5) to be enshrined, as the proposed language clearly allows the board to deem injured workers capable of performing their work and to use these phantom earnings to establish their weekly benefits. To allow this process to continue is a great injustice to all workers in the province. This type of language allows the WCB off the hook regarding the actual placement of injured workers back to some form of gainful work.

Why is Bill 162 splitting the injured workers into two groups? I am sure that these exclusions will be very confusing to workers and employers alike. If you are in one group of workers, you come under Bill 162; if you are in another group, you come under the Human Rights Code. Why?

The Human Rights Code prohibits discrimination based on handicap and provides for equal treatment of persons with disabilities in the provision of goods, services and facilities, occupancy of accommodation, contracts, employment and membership in associations. It also provides in subsection 16(15) that a person cannot be found incapable of performing those essential duties unless it can be shown that the needs of a person cannot be accommodated without undue hardship to the employer.

The recommendations of Majesky and Minna in their task force report were:

"That any worker who sustains a serious injury or debilitating disease linked to the workplace shall have the statutory right to all rehabilitation required by that worker. Rehabilitation shall be defined as 'to assist workers who have suffered occupational injuries or debilitating diseases linked to the workplace in the process of restoration, to the fullest physical, mental, social, vocational and economic independence to the maximum possible extent.' Serious shall be defined as a situation in which the worker is unable to return to the job within 30 days of injury."

Reinstatement and re-employment: Reinstatement and re-employment can be treated as a burden to the employer or a privilege to some of the injured workers. It has to be the right to workers regardless of age, number of employees who are employed by the employer or any other criteria that a politician can dream up.

All workers have a right to protection from termination by an employer that is based solely on a disability that occurred at the workplace. All this section is doing is clarifying to the employer who can be terminated and giving very few rights to the injured worker that he did not already have under the Human Rights Code. Hundreds of thousands of employees are excluded from this section of Bill 162.

At this time, I would like to turn the chair over to Josephine Urh, on behalf of Gabriella Murray. Gabriella is with us today, but because of not reading English very well, Josephine Urh will read her story for her.

Mrs. Urh: My name is Josephine Urh. I am the president of the Peel-Halton Area Council of the United Steelworkers. I am also president of Local 14873.

It is a privilege for me to come here today and speak on behalf of Gabriella. I have worked with her over the past 13 years and seen her struggle with workers' compensation as it exists today. I will see her struggle even more in the future if Bill 162 is passed. This is Gabriella's story:

"I am a member of the United Steelworkers Local 14873. I started working

for my present employer 13 years ago. Approximately eight years ago I suffered a back injury which resulted in a broken tailbone. Roughly three to six months later I was back to work. Over the next seven years I suffered more injuries to the neck, shoulder and back. In September 1987 I suffered my last back injury and have not been able to return to work since.

"My doctor says I can do a modified job as long as it does not include sitting, standing, twisting or lifting anything over five to ten pounds. I have tried other modified work. It just does not work. What does the board say? What would Bill 162 do for me? The board says it will pay me 30 per cent of \$45,000. This equals \$13,500. Because the board deems me able to go to work and there is modified work at my present pay scale, then all the money I would receive would be \$13,500.

"I know I can't work again, my doctor knows I can't work again and my employer knows I can't work again. The only people who don't know I can't work again are the doctors at the Workers' Compensation Board.

"What am I entitled to under today's rules? I am entitled to \$351.90 per month or \$4,222.92 per year. In three years, I would receive \$12,668.76 as a pension. The pension would be paid for life. Under Bill 162, I would receive \$13,500 as a lump sum payment with no other compensation entitlement. Is this the greater fairness the government was talking about? I can say it is absolutely ridiculous.

"I want you all to take a good look at this legislation. Is this how injured workers should be treated? I think not. I ask you once again: scrap Bill 162."

0920

Mr. Wiseman: In the first paragraph which you read for the lady, she says, "I suffered more injuries to the neck, shoulder and back." Were those additional injuries to the first one?

Mrs. Urh: Because of the line of work we are in, her original injury was aggravated by the twisting, the bending and the prolonged standing. So it was more injury on top of it. She kept getting sent back to work and each time she got sent back to work, she accumulated more and more damage to the back where she was originally hurt, and then into the arms because of the twisting motion all the time. It is repetitious.

Mr. Hilker: There were six separate occasions after that when she was off because of another injury that occurred in the workplace, most of it because the back did not allow her to do something she may have thought she was able to do. When she would reach for something, it would come down on top of her and she would suffer another injury. There were six separate occasions.

Gabriella is here and she is quite able to answer her questions too. She just does not read well, but other than that, if you have any questions for Gabriella, she will be more than willing to answer those.

Mrs. Sullivan: First of all, I wanted to indicate that I was concerned about Mr. Hilker's presentation which related to the re-employment and reinstatement provisions. I wonder if you had heard that the minister had said he would adjust and would accept amendments or put forward amendments in relation to the Human Rights Code provisions of that section of the act. Have you heard that?

Mr. Hilker: We are dealing just with the words of the act today, and when those provisions come forward, we will deal with those. As the act stands today, that is what we are dealing with.

Mrs. Sullivan: All right, because there has been a commitment that is a public one in that area.

Mr. Hilker: When those commitments come forward, we will certainly be here to listen to them and talk about them at that time.

Mrs. Sullivan: The other area I am interested in is once again on the reinstatement and re-employment provisions. Do you not agree that the bill has provided a substantial additional protection to workers in terms of returning to work?

Mr. Hilker: Not at all. Probably quite the opposite.

Mrs. Sullivan: Why not?

Mr. Hilker: I have worked in a plant for 24 years. In the past, a lot of it was just taken for granted. If you worked there for a year or six months and you suffered an injury, it was taken for granted that you were coming back or you could go to the Ontario Human Rights Commission.

Now they have made it clear-cut and have told employers: "Hey, if you have less than 20 workers, you don't have to bring them back. Break a leg at work, you are off for six weeks, it does not matter. Don't bring them back." It is very clear: "Less than 20, don't bring them back. Worked there less than a year, don't bring them back." They have told the employer, "This is a way of getting rid of somebody."

In the past it did not happen that way. At least in the past, contracts covered them or the Human Rights Code covered them. That has been taken away from them.

Miss Martel: I just want to come back to Gabriella's story. When you look at what she would receive under Bill 162, there is a severe drop in income and it is going to be increasingly difficult for her to sustain herself. Did the board deem her capable of returning to her former employment and that is why she is not receiving any benefits at this point in time?

Mr. Hilker: That is correct. She was deemed to be able to come back. She tried to come back. The employer did what he could, found her the easiest job in the plant, but she just could not do it. The employer was concerned for her health when she came in. It lasted one day.

Mrs. Murray: An hour and a half.

Mr. Hilker: She was just not capable of doing it. At that time she was cut off. She received no more benefits at that time. It was appealed and she has been reinstated for six months, and at the end of May she will be cut off from her payment, at which time she will be drawing a pension.

Those are the figures we were talking about in the brief. It is the pension she would be available for, and in May she will be cut off her weekly payments and go on to a pension. As you can see, she has been assessed at 30 per cent, which is quite high under the board.

Miss Martel: It is quite high. We do not usually see 30 per cent,

even in our office, so that is why I was surprised, which says to me that she has a severe injury, if the board has at least granted her that. The board doctors at this point say she is perfectly capable of returning to another modified position or the position that she had had—

Mrs. Murray: The board says I can go and look for a modified—

Mr. Chairman: I am sorry. If Mrs. Murray wants to speak, and we would like to hear her, would she come up to the microphone? There is room for three of you there, I think. Otherwise, we cannot pick her up on the transcript. Welcome, Gabriella.

Mrs. Murray: The board says that I can go and look for a job. It is not because I do not want to go to work. I would rather work than stay home, but that was my first job. I never worked before. I have no experience doing other kinds of office work. When they say, "Go look for a job," who is going to hire me when I can hardly stand on my own two feet? I said that if they find me a job and I am able to do it, I will take it.

My adjudicator now is a lady whom I can talk to. Before, the adjudicator I had only knew how to say to me: "Go to work. If you don't get a job, you are cut off." I felt like I was not treated—who are you to tell me? Before, even when they said, "Gabriella, you should stay longer off work," I felt I was able to work; always I had no problem going to work. But now I am not able to work. I found it sometimes very embarrassing being treated as less than a human being. I had always been very proud and worked very hard for everything that I have, and now the treatment that I get from people bothers me. I feel it is less than humane.

Miss Martel: I do not think I have any questions. Thank you very much for coming.

Mr. Chairman: Do you want to just stay there for a few minutes, Gabriella, in case there are other questions? Mr. Wiseman.

Mr. Wiseman: At each of our meetings we seem to hear of amendments that the minister may or may not bring forward. Many of our people who come in are told that the minister has said that he is going to do this or going to do that. I do not think it is fair for any of us as members to ask the people who are making the presentations to answer something that is hearsay as yet. We have not even seen what the amendments are.

I know the members of the government had a meeting on Monday with the minister and maybe he has told them something he has not told us. But almost every day it comes up that the minister is going to bring forward these amendments, and whatever deputation is here is confronted with that and says thank goodness, like this gentleman said this morning. Well, he is only dealing, like we are, with what we see in black and white that is in the bill before us. I do not think we should go through that every day with different deputations until the minister actually tables whatever amendments there are.

0930

Mr. Dietsch: With all due respect, Mr. Chairman, I know that Mr. Wiseman from time to time, like many members, does not always have the opportunity to be present in the House because of reasons of other business. However, those indications were given in the House and are part of the public record. They were given in the terms of indication for members and the general

public so that they would have some feel for that aspect. Many of them know that, and I appreciate the steelworkers' presentation, recognizing what they are dealing with.

Mr. Chairman: Okay. Let's go back to the speakers' list. Mr. Carrothers. Mr. Wiseman, are you finished?

Mr. Wiseman: Yes.

Mr. Carrothers: I just want to ask about the comparisons that you had made as to what would happen to Gabriella under the two bills. Of course, it is my understanding that Bill 162 will not apply to her, so that this is more the case of a hypothetical if she were injured after this.

Mr. Hilker: That is correct.

Mr. Carrothers: But you have talked in terms of a lump sum payment only, which I guess is the noneconomic loss. As you know--

Mr. Hilker: We talked about both of them.

Mr. Carrothers: My understanding of what the bill is trying to do is to separate out on these long-term pensions a piece of that being a monetary component for pain and suffering and another piece being a compensation for lost earning ability. Now they are separated into two pieces, so you can see where they are. The lump sum portion of this bill really deals with noneconomic loss and there is another piece of it which would attempt to deal with what might be lost earning capacity.

I do not see any of that in here and I am just wondering why you felt there would not be an assessment for Gabriella for some wage impairment.

Mr. Hilker: It is there. You have just missed it.

Mr. Carrothers: Have I missed it?

Mr. Hilker: Yes, you have.

Mr. Carrothers: It is early in the morning. Perhaps I have. Could you take me through it then?

Mr. Hilker: Sure. We explained that she would have been deemed to go back to the job that she came from, the same earnings, and therefore, there would be no economic loss, therefore, there is no more money and therefore, she only gets the lump sum.

Mr. Carrothers: Yes. I apologize. That takes us to this deeming thing.

Mr. Hilker: That is correct.

Mr. Carrothers: One of the things I have been curious about is how you feel that would work when the delegations come. Why do you feel she would be deemed given--

Mr. Hilker: She has been.

Mr. Carrothers: She has been--oh, under the previous--

Mr. Hilker: Yes.

Mr. Carrothers: The challenge before us then is to make sure deeming works.

Mr. Hilker: If we can deem things like that, there are many things that we could deem her to be.

Mr. Carrothers: Yes.

Mr. Hilker: We could deem unemployment to cease and everybody could have a job, but we cannot do that. We have to deal with what we actually have in front of us.

Mr. Carrothers: Yes.

Mr. Hilker: She cannot work. That is what we should deal with and not something that we deem to be.

Mr. Carrothers: That is right. We had someone yesterday talking about Saskatchewan, which has legislation like this and which is making changes and have made changes to how its system works, talking in terms of available employment and that sort of thing, available opportunities. You are right. In other words, we could all deem ourselves to be millionaires and go enjoy ourselves, but realistically it would not make any difference for us.

But if the sections here had with them something I guess that caused you to look at real jobs that existed in the community where Gabriella works to see what she might be able to do in terms of jobs that exist in the marketplace, would you then feel that there might be a second component to her compensation here and that we are dealing with jobs that actually exist?

Mr. Hilker: If she can actually do the job and if she went in and got the job, because we all know that once she goes to an employer and says that she has been off for one year or two years because of a severe back injury, there are not that many out there who are going to hire her, especially when they are going to have to pay rates that are comparable to workers who are not injured and who have good work records and are 22 years old. She does not have a hope of getting a job.

Mr. Carrothers: But if we start talking in terms of things that exist, that someone with her capacities--

Mr. Hilker: Who actually hired her? No problem.

Mr. Carrothers: The Saskatchewan thing talked in terms of opportunities, which of course might be a little—but the point I am trying to make is that you look at the jobs that exist in Peel and if there is a type of job that Gabriella could do, then you start making comparisons to that and not, as you say, inventing something just out of thin air, which I do not think is the intent. I would sure like to make sure that does not happen when this legislation works.

Mr. Hilker: If she does not have a job, it does not help her to take that money and go to the store and spend it. Now, because there is an employment opportunity somewhere, where there are also 4,000 or 5,000 other workers looking for the same job, her chances of getting it are very slim and her chances of spending that money that she does not have are equally slim.

She has to have the money in her hand in order to spend it. To say that she can have a job but she does not have it is not good enough. When she finds a job, then we do not have a problem reducing the amount of pension that she should receive.

Mr. Dietsch: Supplementary, Mr. Chairman.

Mr. Chairman: Yes, Mr. Dietsch.

Mr. Dietsch: Just for clarification, in Gabriella's story, part way down the first part after the first paragraph, it says, "My doctor says I can do a modified job as long as it does not include sitting, standing, twisting." What was the company's position in that respect?

Mr. Hilker: The company did not have any problem with that. They went out of their way to try to make sure that she got the best job in the plant, the easiest job in the plant, and she in fact went back to that job. As was stated earlier, it lasted for an hour and a half. That is how long she worked on a job without being in pain.

Mr. Dietsch: She is back to the doctor?

Mr. Hilker: Yes.

Mr. Dietsch: I am very concerned about the type of approach that happens. The way I read it, it says the doctor said she could do modified work. Then she tried the modified work and could not do it, as I understand it. Am I correct?

Mr. Hilker: Provided it did not including standing, sitting, twisting, lifting.

Mr. Dietsch: Yes.

Mr. Hilker: If you can find a job like that, then we are all interested.

Mrs. Marland: Walking or lying down.

Mr. Hilker: Yes, walking or lying down. As long as—

Mr. Dietsch: Okay. I am—

Mr. McGuigan: Or suspended in the air.

Mr. Dietsch: Mr. Chairman, I am quite serious about trying to get to the bottom of this. I am not being facetious at all about walking or lying down. I think that is a bit much.

I am just curious as to what the doctor's approach was after that. Did the doctor then say that she could not go back to work and then it went back through the appeals process with the WCB or not?

Mrs. Murray: Yes. I went to work, although my doctor said, "Gabriella, you cannot return to that job." Okay, but because I worked there 13 years, I called my employers and I told them the conversation and they told me to go back to work. They said, "Okay, Gabriella, you can come in." I went. I was talking to my plant manager and he said: "Gabriella, I don't want you

starting work today. I would rather you be here when the nurse is here because I do not want anything more happening to you because I feel responsible." I said, "Okay, Robert." He said, "You come back tomorrow."

I went back the next day and I talked to the manager. Then he called the nurse, who went around and looked at the jobs, and they said, "Gabriella, do you see anything that you can do?" I showed them the machine and said, "I think I can do that." I worked for an hour and a half. My whole body was shaking because I was in so much pain with standing, plus opening the door and twisting my body.

The nurse came over and said: "Gabriella, you have to stop. You have to go home." She drove me to my doctor. The doctor said, "Gabriella, you can't go back to that work," and I said, "What will I do?" He said, "They have to train you or give you a modified job." I said: "Who is going to hire me? What is a modified job?" Because the compensation board feels that I am capable of doing a modified job it is not willing to give me a fair settlement.

Mr. Dietsch: Thank you very much. I feel that when the opportunity is right, we should ask the board for an explanation on this sort of thing.

Mr. Chairman: Mr. Hilker, thank you very much on behalf of the committee for a very effective presentation. Gabriella, I know you have had a difficult time and we wish you well.

Mrs. Murray: Thank you.

Mr. Hilker: Thank you very much.

Mrs. Marland: Mr. Chairman, may I just ask something procedurally?

Mr. Chairman: Perhaps I could get the next group settled.

Mrs. Marland: Sure.

Mr. Chairman: Could the next presenters come forward? The Canadian Auto Workers, Local 396. Linda MacIntyre.

Mrs. Marland: Just while they are doing that, I want to follow on with my colleague Mr. Wiseman's comments. I think that, as a member of the committee, I would like to avoid asking unnecessary questions and taking up unnecessary time.

If there are proposed amendments or there have been public statements made by the minister, as referred to this morning by his parliamentary assistant Mrs. Sullivan—and the comment was that since the bill was introduced, the minister has made statements in the Legislature—I must tell you, as someone who does sit in the Legislature fairly regularly, I cannot for one moment presume to tell you everything that everybody has said in those hallowed halls.

0940

Could we ask either our researcher or the clerk to have for the committee what the current status of public statements, in the House, out of the House, on videos or whatever by the minister, so that we are not working in a void and in a vacuum of information that the Liberal members of the committee may have?

They may know what their minister is thinking and where they are going. They probably know more than has been said publicly, which I respect. That is their right. But I do not want to sit here as a member of the committee and then at the end have somebody say: "Ha, ha, I told you so. We said all along we were going to do this." I would like to know that now.

Mr. Dietsch: I think, with all due respect, the minister was before this committee some time ago and indicated on the public record, in Hansard, his comments with respect to those amendments. I do not know if the member has reviewed the Hansards, but it is right there.

Mr. Chairman: Perhaps it would be helpful if we did distribute to members of the committee the readily available, for us at least, statements that have been made, put them together in a package for members of the committee. That might be helpful. I would be quite happy to do that.

Mr. Dietsch: The researcher could do that. I think that would be very apropos.

Mr. Chairman: Yes, we will do that.

Mrs. Sullivan: I was just going to add that indeed the minister has spoken to the areas of the act where amendments will be coming forward to the committee itself. Much of that material is available in the Hansard records of our own committee.

I believe that one of the important parts of the discussion of the bill is to be able to discuss not only where there are limitations or difficulties that people have with the bill, but also where there is an indication of change, and to obtain input into the best way of making that change. As a consequence, I do not believe that any member is out of line in any kind of question he asks if he is looking to improvements to the bill.

Particularly where the minister has indicated already, in terms of public consultation and private consultation, that changes will be made, I think it is important that we look, to the best of our ability, at our interveners and discuss with them where they see the most effective ways of making those changes. I think we have exhausted this topic and we can probably move on to the next delegation.

Mr. Chairman: I would like to move on, but a couple of members have indicated an interest.

Mr. McGuigan: I certainly have no problem at all with providing the committee with the public statements. I think we would all benefit by having all these public statements before us. On the principle of our mentioning the fact that the minister is willing to bring about amendments, so many times we have delegations and also opposition members saying: "What is the sense of this? There are going to be no changes. It is written in stone," and so on, when in fact the minister has indicated that we are willing to make amendments.

On the presentations, I think all members here of any party should have full scope to be able to explore the full width of the worst-case scenario. Quite properly, the opposition presents worst-case scenarios. I would too; I did when I was in opposition. But also those on the government side should have the right to present some balancing facts. I am sure we fully intend to do that, whether other members object to it or not, but I think all of us here, within the bounds of a certain amount of reasonableness and parliamentary procedure, encompass the full width of the argument.

Mr. Chairman: Certainly there is nothing out of order with raising matters such as have been raised by members of the government.

Miss Martel: I have just two comments. Briefly, I think that the former presenter did a very good job in fielding the question. I do not think he should be put in the position of trying to comment on something that we have not seen at all, any of us, and that is only a statement of principle.

I think the minister had ample time, since the announcements of the amendments on January 19, to provide this committee with those amendments. I think it was certainly a little bit disrespectful of him not to give us the written form, so that we could deal with it and presenters before us could deal with it. That is the first point.

Second, I also raised some matters with the minister concerning rehabilitation and the future loss-of-earnings section when the board was before us and the minister was here. There were at least two points where I differed with their interpretation and he said he would provide clarification. We have yet to see those clarifications.

Again, we have people coming before us, talking about time limitations on rehab, because that is their reading of the bill, when in fact both the minister and the WCB have stated that is not their intent. I think if he were going to be respectful to us at all as a committee and to our presenters, we should have those documents before us. I do not appreciate that we do not.

Mr. Carrothers: I have to say something after that last point. In terms of procedure, we are talking about seeing amendments now. As someone trying to make some input into this process and finding many of these presentations very helpful in my understanding of how this legislation might work, I think it is extremely premature to be talking about amendments now. Amendments come in when we do our clause-by-clause debate and that is where we have input. I think it is premature to be talking about amendments before we have heard all these inputs. I suggest it is very difficult.

Miss Martel: They are his amendments.

Mr. Carrothers: I think we talked about a willingness to make amendments, and the point of this exercise we are going through now is to see what those amendments might look like.

Mr. Chairman: Is the committee ready to proceed with the next presentation?

Mrs. Marland: Mr. Chairman, would you mind explaining to Mrs. Sullivan that this committee does not have Hansard available yet.

Mrs. Sullivan: I have Hansard, Mrs. Marland.

Mrs. Marland: Of this committee?

Mrs. Sullivan: From the presentations Mr. Sorbara made to the committee.

Mrs. Marland: You have a copy of Hansard of this committee?

Mrs. Sullivan: Yes. All members of the committee would have that.

Mr. Chairman: I think the Hansards are available, to be fair. Can we proceed?

Mr. Wiseman: Just to summarize, Mr. Chairman, are we going to get that information compiled, to the best of our knowledge?

Mr. Chairman: Yes. I agree with members of the committee who would like to have a package in front of them of the public statements of intent of the minister vis-à-vis amendments and interpretations of the bill. I think that would be helpful for all members of the committee. We will do that as quickly as possible.

The next presentation is from the Canadian Auto Workers. As I indicated earlier, Linda MacIntyre is here. I am sure you will introduce your colleagues and proceed. Welcome.

CANADIAN AUTO WORKERS, LOCAL 396

Mrs. MacIntyre: My name is Linda MacIntyre. I am from the Canadian Auto Workers, Local 396. I am the president of my union and I am also the benefits representative of my union. I have here an injured worker, Luisa Malli—she will be speaking on behalf of her injury—and Jim Crocker of the committee on the Workers' Compensation Board.

I am sorry I do not have much of a report. I was not told and called upon until last Wednesday at about a quarter to six. It is very short, but I will try to do the best I can.

Good morning to everybody who is present. May I take this opportunity to say one word at the outset of these proceedings. That word is "help." These injured workers, whom I have represented for 10 years in our plant, are pleading, with me, "Help us." Remember, an injury to one is an injury to us all.

This legislation does not do anything for an injured worker. We are not like a piece of our employer's machinery that has broken down. We are human beings who need help; not set up like a meat chart as our age is concerned to the board. We are hurt. Even if our age is 20 or 60, we should be given the same compensation benefits for our injuries.

I have helped many injured workers, whom I have represented in appeals, to have their pensions increased. In these cases, the success rate was well over 85 per cent in favour for the increase. Why is Mr. Sorbara, who says he has listened to many injured workers' groups, unions, etc., not aware that this proposed section 45 of the act as set out in section 15 of the bill severely limits injured workers' pensions and indeed cuts them off at age 65?

The employers cringe at the fact that an injured worker is receiving a WCB pension and continues to work in the company. The companies, as well as Mr. Sorbara, have a total disregard for the injury the worker must live with and endure the rest of his life. Why should their pension not remain with them as their injury certainly does?

Proposed Section 19: It is extremely difficult for an employer to reinstate injured workers, even with a union's collective agreement. A recent letter from Mr. Sorbara sent to the CAW is still no assurance of protection to

workers being reinstated. Example: The worker will be offered their former job or comparable alternative employment or a suitable job if a vacancy occurred.

The interpretation is leaving an injured workers high and dry. What is significantly missing is that those injured workers presently need some placement. For them, there is nothing. Mr. Sorbara ignored the Minna-Majesky report.

Proposed section 20: Very simply, the injured worker's own physician is the one best qualified to assess an injured worker's medical status, not someone who knows very little about the injury. The board's doctor only records the reports. The examination and assessment of the injured worker at the board level are not qualified to say how much damage is done and whether to give him a pension or not.

0950

One of my experiences was where an injured worker was sent to a specialist who said there was nothing wrong with this person. Then we had to speak to her family doctor, who sent this injured worker for a computerized axial tomography scan. She is here today. She can explain to you. She is scheduled for surgery now at Mount Sinai Hospital on April 12, 1989.

Mr. Sorbara has taken away and Mr. Sorbara will give it back, after denying injured workers the right to appeal. Mr. Sorbara intends to give it back. Appeals are a fundamental right of injured workers and should remain so. The employers do not like the Workers' Compensation Appeals Tribunal, but the legislation proposed excludes the tribunal's review in two areas.

1. The lump sum payment may not be appealed to the tribunal. If a worker wishes to appeal the lump sum amount, he is restricted to agreeing to submit to an additional medical examination for which the employer must also agree to the choice of doctor.

2. The tribunal is also excluded from considering any aspect of the reinstatement provisions. The worker is greatly restricted in challenging whether or not suitable work exists with the employer. The injured worker is put out in the workforce to find another job that may pay less and have no benefits. The WCB will make up the difference in wage from six months to two years, leaving the injured worker on his own after this time expires.

I may not have covered all Bill 162 in its entirety, but these are a few concerns of the injured workers whom I represent. Thank you for your time. I hope you will take all of our concerns seriously and recommend that Bill 162 be withdrawn from the Legislature.

Mr. Chairman: Thank you, Mrs. MacIntyre. We appreciate the fact that you did not have much notice. It was a decision of the committee to try to get in a few more presentations.

I have one question. On the first page, when you talk about the proposed section 19, is that an actual quote from the minister? You say: "A recent letter from Mr. Sorbara sent to the CAW is still no assurance of protection to workers being reinstated. Example: The worker will be offered their former job or comparable alternative employment or a suitable job if a vacancy occurred." I am wondering whether that was a quote or an interpretation. I did not understand that.

Mr. Crocker: Maybe I can clarify that for you. Mr. Nickerson, our secretary-treasurer, wrote Mr. Sorbara in regard to some problems we had with that whole section on reinstatement. I think he specifically outlined the area that deals with the collective agreement superseding or not superseding and that kind of stuff. He sent us back an explanation from his department on that, and that was part of that explanation. I guess it can be quoted from the letter.

Miss Martel: I know you have a colleague with you who is supposed to have surgery. Can I just ask where it says that she was sent to see a specialist who said there was nothing wrong. Was that a board doctor or was that outside the board?

Mrs. MacIntyre: No, a specialist from her family doctor.

Miss Martel: Okay.

Had you gone through a board examination at that point and what did the board say about your particular disability?

Mrs. MacIntyre: She can answer you best, because she went to all these doctors, about how it started and the problems to this day.

Mrs. Nalli: Good morning, everybody.

Mr. Chairman: Can you lean forward a little bit so that we can pick you up.

Mrs. Nalli: I am Luisa Nalli. I will start from my accident in 1981. After five years, I had this problem. I was working a punch press. I was working for four days on a hard job. Then she sent me to another punch press the day after and I could not stand it. I had a big crack in my back. I went to the nurse the first day. I told them what happened. I said, "I cannot work." She said to me: "That's okay. Keep going. We'll see if you are all right."

After two hours, I saw my hand was swollen. She said to me: "It's okay. Keep going, Luisa, keep working." I said, "Okay." I worked for another four days. I said: "My arm is swollen." All my muscles were swollen. She sent me to the company doctor for X-rays.

They took X-rays of my wrist but they did not find anything. I could not work. My hand was swollen all the time. I stayed off for 10 months. For 10 months I went to therapy. I could not stand it; the therapy did not help me. When I moved my hand it would swell. The Workers' Compensation Board sent me to the Downsview rehabilitation centre. I did exercises there and I was blamed for not doing the exercises. I was doing my exercises like this. My hand was sore. I said it was sore over here. They checked me here all the time, sent me to Sunnybrook Medical Centre for X-rays, everything, but nobody looked at my neck.

I stayed off 10 months and then Downsview sent me back to work. This was the 12th. They called me into the room and said, "Luisa, come back here on the 17th, then January 6 you have to go back to work on a regular job." This was a few doctors and three people for exercise in the room. I said, "I can't go," not because I wanted to refuse a job, but I know myself. The doctor for psychiatry checked my arm and said: "No, you can go back to work because it's

your mind, Luisa. You have to go back to your regular job." I said, "Okay." I did not want to lose my job. I went back January 6.

I could not work. I went to the nurse and said I could not work. She said: "Luisa, I don't know. You have a problem, but we don't know where the problem is." I said, "If I force myself to work I might cause more problems." She said, "Nobody believes you." I said, "I know." So I stayed until June.

Another thing: When I went back, on January 21 I called a nurse. I said, "The compensation board sent me to work and I want to go see them again because my hand is swelling." I went to Downsview to see the doctor again. I said: "You sent me back to my regular job. Look. It's not because I don't want to work." He said to me, "You have to continue work."

I continued to work until June. In June, I went off and stayed off until February. No one could find out what it was. I was in pain. I had a family doctor before and I changed doctors because he told me there was nothing wrong with me. They called me to Bloor Street and the doctor who examined me said, "Just a minute, Luisa." She talked to my family doctor and said to me: "The doctor says you have nothing. I have to send you back to work."

This was February 9. On February 11, I went back to work. They put me on my regular job again. First I was on a punch press, then they sent me to the paint shop. There are a lot of parts on the line. You have to have a piece all the time and go fast. A lady engineer looked at me and said, "Watch, Luisa." I was behind on the line and sometimes the supervisor was mad at me because I could not work. I said, "I can't." They said: "Nobody believes you. What are you going to do? You have to work."

I worked until April 21. It was two months from February 11 to April. I could not stand it. I went back to the doctor. I asked my adjudicator to give me another doctor. That doctor sent me to a specialist on Finch. He said to me: "I know you have a problem. I can see it on the X-ray. But I don't know if you can have an operation, Luisa." He said, "I would appreciate it if your family doctor would send you to another specialist better than me to get another opinion."

1000

I was sent to a specialist at Keele Street and Wilson Avenue, Dr. Mayer. He said it was in my mind. "You're a nervous person. There's nothing wrong with you." Right away I called and made another appointment with my family doctor. I said, "Come with me, because he said I'm a crazy lady and I don't have anything." We went from there. She came and talked and I went and talked. I said, "Doctor, you have to do something because I have a problem."

It was the week before Christmas. The specialist said: "You have another week. You have to go back to work. I'll send you for another test. This is the last one you can get. It's a CAT scan. You have to try this."

They sent me for a CAT scan and found out what I have. I went back to the specialist and he sent me to another specialist. It was last September, 1988. As soon as this specialist saw me he said: "How could they keep you three years like this? You have a lot of problems now with the right arm." He said, "You can't stand it like that. You're too young. You need the operation." I asked if it was guaranteed. He said: "Nobody can guarantee it, but you can't stay like that. You'll be in a wheelchair in a few years." I can

see myself, from this problem now it goes to the other side. I have no more power here and now it goes this way.

I went this year and made another appointment. I decided to go for the operation. They are going to do it at 3 o'clock on April 12. They are going to cut me here. I will have an operation to feel better, but nobody can guarantee that I will get back my power in the left arm.

Mr. Chairman: I thank Mrs. MacIntyre and her colleagues for coming before the committee, and good luck to you.

The next presentation is from the Canadian Federation of Independent Business. Members have been distributed a package of material from them. We have Judith Andrew here and Mr. Botting, I believe. It is good to see you again. Welcome to the committee. I am sure you will tell us how to work our way through these documents.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Mrs. Andrew: I am Judith Andrew, director of provincial affairs for the Canadian Federation of Independent Business. To my left is Dale Botting, the executive director of provincial affairs. You have several submissions before you. The core one is the one entitled Submission to the Resources Development Committee on Bill 162, dated March 22. The others are given to you by way of background material in terms of your being able to delve into detail on some of the points we are making today. If it pleases the committee, we would like to read our submission into the record—it is very short—and then use the remaining time for questions.

The Canadian Federation of Independent Business is pleased to appear before the standing committee on resources development on behalf of our 39,000 small-sized and medium-sized business members in Ontario.

The small-business sector has been assuming a growing role in the economy of Ontario and in Canada in recent years. In the period from 1978 to 1986, for example, Ontario firms with fewer than 20 employees were responsible for as much as 68.5 per cent of all net new jobs created. In addition, over 90 per cent of the firms in the province have fewer than 20 employees. Trends indicate that the small-business share of the labour force and economic output is expanding and will continue to do so in the future.

CFIB membership is very representative of the overall small-business community on the basis of industry sector, firm size, age and location. As a result, CFIB data and research reflect the concerns of Ontario's independent-business community overall. It is worth noting that about one third of CFIB members in Ontario are located in rural areas and another third in smaller urban areas of the province, with the rest in the large metropolitan centres.

Given that so much attention is focused on the economic growth and social problems associated with Metropolitan Toronto, the federation presents a balanced perspective on issues from across the province.

Reform of workers' compensation legislation is of particular concern to CFIB members, since Ontario Workers' Compensation Board premiums are now, on average, the highest in Canada. In fact, among all the issues identified by our Ontario members, the rising cost of WCB continues to rank as one of the most significant problems affecting small business, identified by 47 per cent

of the respondents in CFIB's most recent quarterly survey, conducted October through December 1988.

Our concerns are compounded by the fact that the Ontario WCB has one of the largest unfunded liabilities in all of North America, approaching \$7 billion. In concrete terms, our research shows that employer costs of WCB are on average about 18 per cent higher than they would be if there was no unfunded liability. That point is drawn from the CFIB study that you have with you.

Much of the huge debt burden was created literally overnight, when the Legislature, in 1985, moved to index permanent WCB pensions. However, when the Legislature decided to index those WCB costs accrued from several former generations of businesses and employees, it simply created too great a load for the current small-business community to shoulder.

Taxes levied on business firms as a percentage of wages have become an inviting field for increased government revenues. With respect to workers' compensation, CFIB implores the Ontario government to maintain fiscal discipline within the WCB and resist the temptation to use this narrow form of payroll tax to fund universal forms of health care or social policy.

We are somewhat encouraged by the philosophical premise of Bill 162 to restore the system to principles of pure wage-loss insurance. But much more work needs to be done in overhauling many other parts of the Workers' Compensation Act, to improve definitions of accident and injury and other adjudicative criteria and, generally, to streamline the adjudicative process.

CFIB recognizes that Bill 162 represents only one small step towards badly needed reforms. We shall continue to be an active participant on a labour-management advisory committee to advise the Minister of Labour (Mr. Sorbara) on an agenda for a green paper, which should guide further discussions later in 1989.

On a number of those issues, again, you will see the CFIB study. The one with the coloured front-cover has a lot of very important information on a number of these other issues.

As a further preamble to today's presentation, it is also important to note that the CFIB is an active member of the Employers' Council on Workers' Compensation. We serve as secretary to the ECWC and participate in several of its subcommittees, including the executive committee. We are therefore in full agreement with the positions put forward in that organization's brief and presentation to your committee yesterday on March 21. We believe that the position taken by this coalition of trade associations represents a fair and responsible approach to this bill.

I will give you a summary of our concerns over Bill 162 prior to January of this year. Throughout 1988, CFIB has met frequently with Labour minister Greg Sorbara and his officials from the ministry. A summary of CFIB's concerns over Bill 162 was sent to every member of the Ontario cabinet last November. In summary, our concerns were as follows:

1. No attempt to correct existing inequities: Bill 162 fails to fairly reallocate existing pension moneys from the approximately 80 per cent overcompensated to the 20 per cent of pensioners who are undercompensated. New spending on supplements of \$48 million per annum, related to the total liability increase of \$846 million, will partially address the problems of the

undercompensated but, in our view, a high degree of overcompensation still continues.

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2. Raising the earnings ceiling may prolong persistency rates. Raising the earnings ceiling to 175 per cent of Ontario's average industrial wage will worsen the problem that replacement of lost earnings already exceeds 100 per cent in some cases. In other words, owing to the nontaxability of compensation benefits, workers are better off financially to be injured rather than well. This feature of Bill 162 actually works against the goal of securing early rehabilitation and reinstatement.

3. Reinstatement rights require further qualification. The reinstatement provisions create an unqualified right to re-employment in favour of the injured worker. No exemption is made in the case of an employer who no longer employs individuals in the work previously performed by the worker because of a cessation, reduction or change in operations. For example, if the workforce is on layoff, the injured worker must still be reinstated, even though everyone else is awaiting recall.

Despite these reservations, the CFIB is grateful that the minister has recognized that businesses employing less than 20 workers do not have the resources to reinstate in every case. To legislate otherwise is to injure small business in Ontario and to ignore reality.

At this point, I would like to refer you to another document in your possession. It is dated September 4, 1987. It is our response to the then Minister of Labour concerning reinstatement rights. The last few pages of that submission give some results of provincial survey questions of our Ontario members.

I will refer you to table 1. The question was asked, "Have you experienced difficulty in reinstating injured workers following rehabilitation?" You can see that, of the respondents, only 10 per cent of our members had experienced difficulty; 38 per cent had not; and over half were not affected by this. In other words, they had never had an occasion to consider this.

You can see in the subsequent tables 2 and 3 and so on that the youngest firms and the smallest firms in fact had even less difficulty reinstating injured workers. Therefore, the exemption for the small firms and the young firms that is in Bill 162 makes eminent sense, since these firms are already the ones that tend to do a fairly good job at bringing people back whenever they can. The reason the exemption is valuable is that, in many cases, there just is not light work.

I will bring you to table 5 of the brief, the very last page. Of the 10 per cent that had difficulty reinstating injured workers, the key reason was no light-duty work, and 65 per cent said that; and the other major reason is the delay and uncertainty involved in the rehabilitation process, and that was over 54 per cent. We are hoping that Bill 162 will improve the rehabilitation, along with the board's new rehabilitation thrust, and that will reduce that problem and in fact allow more workers to be reinstated wherever they can be.

CFIB has also begun intensive consultations with the Ontario Medical Association to promote improved dialogue between doctors and small employers during the rehabilitation process—again, another effort aimed at ensuring

better rehabilitation and reinstatement.

As a final comment on the reinstatement provisions, CFIB must also agree with the minister that there is no purpose to including the construction sector. The construction industry is largely one in which unions allocate work and rehabilitation is therefore in the hands of organized labour in that industry. Labour therefore has a unique opportunity to show that it can outperform the Legislature or the board or industry in general in the rehabilitation field, should it care to take up the challenge.

4. Sloppy drafting: Several instances of sloppy legislative drafting, if left uncorrected, will diminish the prospects of this legislation functioning properly and being cost-neutral, as promised by the Minister of Labour. For example, Bill 162 definitions of "disability" and "impairment" reverse the long-standing meaning of these terms. The legislation does not clarify that benefit continuation applies to compensable injuries only. The provisions covering both the economic- and non-economic-loss awards suggest that speculation about uncertain future possibilities will affect the level of the award.

I will turn to my colleague.

Mr. Botting: The above-noted concerns were noted in response to the legislation introduced by the minister on June 20, 1988. A few months ago, on January 19, 1989, Minister of Labour Sorbara announced further changes to Bill 162, which included the following:

First, injured workers are to be offered re-employment in the form of modified work in keeping with the spirit and intent of recent changes to the Human Rights Code which require employers to accommodate disabled workers "without undue hardship" on the employer.

Second, injured workers may choose either a doctor from a government-appointed roster or one suggested by the Workers' Compensation Board for the purpose of determining the degree of an impairment.

Third, either an injured worker or an employer may appeal to the Workers' Compensation Appeals Tribunal, WCAT, a WCB decision regarding the sum of a non-economic-loss payment.

Finally, in these recent amendments, either injured workers or employers will soon be able to appeal WCB re-employment decisions to the WCAT. This refers to whether or not an injured worker has been re-employed by the employer as required by law.

In essence, these changes will ensure that all new provisions contained in Bill 162 may be referred to WCAT. The CFIB strongly opposes this for the following reasons:

First, we have concern over appeal of noneconomic awards. The lump sum award originally could not be appealed to the Workers' Compensation Appeals Tribunal, and the minister has also announced his intentions, as I just mentioned, to allow access to the WCAT.

The CFIB strongly opposes this. The award is subjective, arbitrary and is given to be assessed in accordance with a tried and proven accurate clinical rating scheme, and there is nothing to be gained by appeal activity, nor anything to lose by minor limitations on appeals. The monetary impact of

such an award is limited to a few hundred dollars per percentage point, and even the most hard-pressed worker may find it difficult to show that an appeal action in this area is cost-effective.

Originally there was a very fair internal review or appeal process that required the use of external medical opinion. These are, after all, primarily medical judgements.

Second, with regard to these newest amendments, we have concern over appeal of reinstatement. There originally was no appeal to WCAT with regard to determinations on whether an employer has met his obligation to reinstate a worker. Again, the minister has announced his intention to allow for access to the WCAT on this and the CFIB again has strong concerns.

The employer must reinstate or quite literally pay the consequences. It is the rights of employers which are denied in this area, not the rights of the workers. These are rights which employers are, to the extent that it is possible, trading for guarantees of effective vocational rehabilitation. However, since Bill 162 places no obligations at all upon the worker to accept, participate in or co-operate in any rehabilitation program or activity, we see no need for further appeal until all parties are committed by the act to the same goals and standards. While Bill 162 does place certain requirements upon the board with regard to offering assistance and assessment, it does not require the board to go any farther.

Finally, we have concern over use of external physicians for impairment ratings. Under the language of the bill, the assessment may in fact be conducted by a medical practitioner who may or may not be an employee of the Workers' Compensation Board. It is the position of the CFIB that in turning to external practitioners, the government may surrender the expertise and consistency which the present team of compensation specialists brings to the permanent disability rating program. It is questionable whether external physicians acting in isolation will be able to render reliable and reproducible impairment ratings.

The CFIB also has great concerns with respect to the responsibility that is to be conferred upon the examining practitioner. Under the bill, the physician is directed to assist the injured worker "having regard to the existing and anticipated likely future consequences of the injury." It is the position of the CFIB that this will provide for a worst-case scenario resulting in overcompensation in every case.

We therefore recommend that the government: (a) clarify the function of the medical practitioner; (b) not refer ratings to outside physicians; and (c) prohibit speculation about anticipated possibilities.

In conclusion, the CFIB recognizes that the Ontario government is being pressured to dramatically change the thrust of Bill 162. In our view, objections from the injured worker community are founded on misinformation. It appears that workers fear the withdrawal of their pensions. In fact, Bill 162 will leave existing overcompensated pensioners, i.e. those who receive their pensions in addition to their regular earnings, with the same pensions or will provide additional supplements. There is no change in terms of the existing pension arrangement.

Despite the flaws in Bill 162 enumerated above, CFIB believes that the Ontario government should retain the core principles of Bill 162: the dual-award system, early intervention for rehabilitation and encouragement for

reinstatement where possible. Smaller firm flexibility with regard to reinstatement, as we have said, is vital.

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Legislators should be aware that the employers have made a major concession in allowing official recognition of noneconomic loss in a system that originally provided no-fault coverage for wage loss only. The aim is to provide fair compensation for the two types of loss sustained, economic and noneconomic.

CFIB remains concerned that the workers' compensation system remains in a unsound financial state and that without carefully planned positive changes, it is unsustainable in the long term. Consequently, we urge you to support the Minister of Labour in retaining the key features of Bill 162, with the necessary amendments we have suggested.

Further, in closing, if I may make one last observation, I come from Saskatchewan originally. Indeed, I was employed in the Blakeney government in the 1970s and early 1980s and was around at the time when the Saskatchewan New Democratic Party government introduced the wage loss insurance scheme. I strongly encourage members of the committee, if they have not done so already, to review the studies done by the Blakeney government and subsequently by the Conservative administration: the 1978 report commissioned by the government to look at wage loss; the 1982 report, which validated the wage loss scheme; and the 1986 report which, most recently, has further built upon the wage loss concept.

In every one of these instances, I believe you will find that the concerns others may have expressed to you are greatly allayed by looking at real-world working applications. If you would like further commentary on this, I suggest you may want to invite Judge Muir, who was the independent commissioner who did each of these studies, to perhaps come to your table and further share the Saskatchewan experience with you, or perhaps you might talk to Brian King, the former chairman of the Workers' Compensation Board in Saskatchewan and now chairman of the WCB in Manitoba, previously appointed by the NDP government in Manitoba, or perhaps Wes Norheim from the Saskatchewan Federation of Labour or some of the business representatives who were there at the time.

I leave you with those thoughts, because I believe the Saskatchewan example is a model that is working and is widely accepted by both parties.

Mr. Laughren: Thank you. We will at least try to get copies of those reports for members of the committee, because I am sure members would appreciate that. I know, too, that we appreciated the directness of your report. I had several members indicate an interest in asking questions.

Miss Martel: I want to ask a question that goes back to page 3; at the bottom you listed some of your concerns. You state that 80 per cent are overcompensated, 20 per cent of pensioners are undercompensated. Who are you referring to when you talk about 80 per cent? Is that the entire workforce, the group you represent or who?

Mrs. Andrew: The 80 per cent refers to existing pensioners under the current WCB program. These would be people who are not sustaining wage loss at all, who are receiving pensions in addition to regular wages. The people we feel sorry for and feel ought to be aided by this legislation are the

remaining people who genuinely cannot return to work and yet have been awarded a pension at only a fraction of what their previous earnings were. In this bill, there are supplements proposed to help those people, but it does not help them entirely. The remaining people who are earning their regular wages plus their pensions are not touched by this bill.

Miss Martel: If I can continue, can I ask where you get the figure of 80 per cent? What study is that based on, so this committee can get that information? I note that in a January newspaper article you said 70 per cent, the minister said 30 per cent, and I have yet to see any study that gives any percentage or validates those percentages one way or the other. I would like to know where that is coming from so we can get our hands on it as a committee.

Mr. Botting: If I may, that information was imparted to us by the strategic policy group within the Workers' Compensation Board. It was given to us through verbal information. It was further indicated that it was partly a proxy measure, because approximately 80 per cent of all permanent partial disability awards had a less than 20 per cent impairment level. The implication was that given that low impairment level, the net wage income post-injury was in many cases either equal to or higher than the pre-injury state. It was imparted verbally through our discussions with the board.

As we indicated also on page 2, we are on the green paper committee exercise and part of that exercise for both business and labour is to extract more detailed information, so we too are pursuing that in writing. But that is the context in which we were given that number.

Miss Martel: Some of it was verbal and some was based on some type of strategic study done within the board, as far as you know? I have some difficulty believing that, so I would like to request that the clerk try to obtain a copy so we can see exactly what the board has that we do not have or what the Minister of Labour, apparently, does not have.

We will be looking at the Saskatchewan model, because we have requested copies of it. As well, we did have a member from the Ontario Liquor Boards Employees' Union yesterday who gave us some of the amendments proposed by the review committee which said, in particular, that the deeming aspects of the bill were not working well at all. That was a review committee set up by the Legislature, which has made some major changes, saying the deeming should be not allowed except in very specific cases where the worker, for example, refused to return to the workplace. I would suggest it is not working quite as well as you wanted to suggest.

Mr. Botting: If I may interject, I have the Saskatchewan report in front of me. I have the deeming chapter in front of me.

Miss Martel: I have it as well.

Mr. Botting: If you go through the chapter, the expression "not working well at all" does not appear in the report. What it refers to is "the need for deeming under limited circumstances, assuming the rehabilitation program does its job first." Without getting into the technicalities of the report, I think it is important that they qualified it in that kind of context.

Miss Martel: It also says, "Deeming occurred where the wage level was nowhere near what the board had stated in its letter to the injured worker or that workers were being deemed to have jobs in areas in which jobs were not available," etc. So I think there were some major concerns, and it was not all

quite as rosy as some of us were led to believe.

I guess the only other thing I want to say is that I do take exception to your conclusion where you say that "the objections from the injured worker community are founded on misinformation." The Minister of Labour tried to pull that same stunt in the House on me, by saying the reason people rejected this bill was because they had not read it. I would like to suggest to you that some of us have read it. Some of us have worked at the board and know this very well.

To suggest that everyone who objects to this is doing so only because he or she is misinformed is really a slap in the face of the credibility of some of these people who have worked for compensation and on behalf of injured workers for many years. I do take some real exception to that, because many of the groups and their representatives who have come before us have worked on behalf of injured workers for years and understand the legislation and the proposals very well.

Mrs. Andrew: Just in regard to that, we have in our possession various pieces of literature that portray the bill in a way that would lead, I think, the average person receiving a pension to be quite fearful for that pension. Our point here is that existing pensioners, whether they are overcompensated or not, are not going to be touched by this bill. This is only to be in effect from here on in, whenever the bill receives royal assent. So existing pensioners who are fearful for their current pension need not be, and there seems to be some literature about that would serve to give them those fears. That is why we are saying there is misinformation.

Mr. Dietsch: Would you provide us with copies of that correspondence that you have?

Mrs. Andrew: Certainly. There are articles and so on that do not clearly distinguish the fact that existing pensioners are not going to lose their pensions.

Mr. Chairman: Miss Martel, we will try to obtain documentation from the Ministry of Labour and the WCB on overcompensation of injured workers.

Mr. McGuigan: On page 2 of your submission you point out that the unfunded liability is approaching \$7 billion and that most, if not all, of this was created following the decision in 1985 to index permanent pensions. I have a hard time rationalizing that in my mind. I wonder if you could present us with the projections and the rationalization for that. I guess what bothers me is that WCB total payments in a year are about \$1.5 billion and in the two years that this has been operating, if you ascribed all of that to those changes, it would only be \$3 billion. From this point on, inflation would affect the premiums coming in as well as affecting the payments coming out, so I have a bit of a problem.

Mrs. Andrew: Certainly. The \$7-billion unfunded liability is an actuarial calculation by the board. It is their estimate of what future payments to injured workers will cost with regard to existing assets that the board has on deposit. The difference between those two is approximately \$7 billion. It really was with the stroke of a pen that a lot of that was created, because to index all prior pensions in fact increases that liability immediately. Yet the assets have not changed, so the difference between the two grows to \$7 billion.

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Our concern is that because there are some 300,000 firms in the province, that amounts to over \$20,000 for every business in this province. Many of them have fewer than four employees. It is just an impossible figure for them to come to grips with. It is probably more than the capitalization of many of these firms. So the \$7 billion is something that was mainly created by legislative decisions. It has to do with prior, old injuries and former employers and yet the current generation of employers is having to pay for it.

They are having to pay 18 per cent more in premiums than they would if that unfunded liability were not there. It just seems to be a millstone around the neck of small business. We do not believe there is really any prospect that it will go away. I know the board has projections that it will go away, but we do not believe so.

Mr. Dietsch: As I understood it, the board in its presentation to us outlined a strategic plan for addressing that unfunded liability. It is also addressed in its annual report for 1988.

Mr. Botting: I was just going to refer to that annual report. There are a couple of key graphs in there. I am sure you have all got the annual report. You can see, first, where the dramatic leap in the actuarial calculation of the projected unfunded level of liability really does climb from 1984 to 1985. Second, there is that chart which attempts to show kind of an amortization curve and buying down the unfunded liability over time.

We must tell you, though, in many ways we believe that is a good piece of science fiction, because it was based on a 1984 actuarial study, based on legislation and legislative assumptions in the environment of 1984, as we understand it. There has been a lot of other water that has gone under the bridge since 1984, and we therefore have some real concerns about the unfunded liability forecast. I would be pleased to discuss unfunded liability in great detail today, but suffice it to say that it is a millstone and a major jump.

Mrs. Andrew: Our major study has a whole chapter devoted to this, and you will see how sensitive that unfunded liability is to very small changes in the experience of the WCB. If the persistency rate goes up a wee bit, if the accident frequency goes up a wee bit, you are suddenly into \$20 billion of unfunded liability rather than \$7 billion. It is not at all a foregone conclusion that this is going to disappear over 30 years, and 30 years is a very long time for which to make those kinds of estimates.

Mr. Chairman: For members of the committee who have an interest in this, on page 62 in the major report there is a chart, going up to the year 2000—and these are CFIB's projections, I assume—that indicates a \$15-billion unfunded liability. I am wondering whether I might, to follow up on Mr. McGuigan's question, ask whether this has been updated since Bill 162 was introduced, because this was in 1987, I believe.

Mr. Botting: No, it has not. It is a major question, the impact of Bill 162 on the unfunded liability.

Mrs. Andrew: We know that Bill 162 is more costly than the current system. We have those kinds of actuarial estimates. This was done by Johnson and Higgins Willis Faber. We have not as yet asked them to update it.

Mr. Botting: A lot of that was based on material we had; various

economic forecasts as well as legislative forecasts. The unfunded liability is a change between the growth in assets and the growth in liabilities. Obviously, if your asset portfolio is not doing well in deflationary times or climbing well in inflationary times, yet your asset growth may not—in other words, your liability can be climbing but your asset growth can be low, depending upon an economic recession. We have factored that into our various forecasts. As I say, there are a lot of grey areas here in determining what is going to happen by the year 2014.

Mr. Chairman: I assume the CFIB is opposed to a pay-as-you-go system, rather than the funded system. Is that correct?

Mr. Botting: We have some concerns about pay as you go. It has to work on an actuarial basis, but let's make sure the actuarial assumptions are updated and that we know exactly what the blueprint is, using the best information possible.

Mrs. Andrew: Since we are on this topic, I think it is worth pointing out that when other provinces index their systems and would have created huge unfunded liabilities, the provincial treasuries also help to allay some of that cost. That was done in Alberta and also in Nova Scotia—is that correct?

Mr. Botting: Yes, Nova Scotia. I believe as recently as the budget of the Manitoba government last year, in Manitoba they had allotted \$18 billion—I am sorry, \$18 million; they do not get into the billions over there—as an absorption of part of the unfunded liability through general consolidated debt, knowing that the millstone was very great for the employer community.

Mr. McGuigan: On page 4, item 3, in the last line you say, "For example, if the workforce is on layoff, the injured worker must still be reinstated, even though everyone else is awaiting recall." Is that not a bit of an overexaggeration in the situation? If a factory is closed down, how do you reinstate an injured person?

Mrs. Andrew: It is a virtual impossibility, but I think what we are trying to point out here is that the wording surrounding this reinstatement provision has to be very precise, because otherwise there can be real problems and real conflicts in this area, and it has to legitimately recognize the circumstances when reinstatement cannot be accomplished. That may be in a small firm where there is no light work and it is operating on a shoestring and, much as they would want to, there is absolutely no way and no place for that injured worker. It might be in a larger firm that is experiencing difficulty and has layoffs, but it has to be worded in such a way that these kinds of anomalies do not occur. You may be right that we are exaggerating here, but it could happen.

Mr. McGuigan: Do you not think it is worded that way now?

Mrs. Andrew: No. We think a lot more precision is necessary in the wording. We were told by the ministry that a lot of these things would be fleshed out in regulation and not to worry about it. Well, we are worrying about it and we would like to see it made more precise.

Mr. Botting: There are other examples, Mr. McGuigan. I know you have probably heard about the seniority clause already and how that works in context with this. What happens when you have more than one person on

temporary total disability and then you want to reinstate them? Who gets seniority within just that group and how do you work all that thing through?

Mr. McGuigan: I am aware of that, but your written statement here seems to be dealing with a situation that, to my mind, would not exist.

Mr. Botting: There are examples of not perhaps just layoff but relocation, consolidation, transfer, all of those things. We just tried to make that example as an illustration of the need to qualify how reinstatement is really going to work.

If I may add, going back to our latter remarks, it is going to be particularly important if this is going to the Workers' Compensation Appeals Tribunal for appealability that the Legislature try to set the ground rules for the appeal as best it can in the rule book, in the act. Otherwise, you are abdicating the responsibility for setting the adjudication process to bureaucracies. Where the Legislature can, I think the Legislature has a responsibility to tighten up the rule book first before it turns it over to the adjudicators.

Mrs. Andrew: You are assuming that everyone is reasonable in going through these things, and that may not be the case. An appeal may go before the WCAT, and even where clearly there was no possibility of reinstatement, the employer could be found guilty of not reinstating. We are saying you should make it absolutely clear so that everyone can understand under what circumstances reinstatement must take place.

Mr. McGuigan: I guess my point is that you are making out that there is a lot of misinformation and I am pointing out that there is misinformation in your brief, too, when you take a look at that statement by itself.

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Mr. Botting: I think, though, again, if you look at the case where there may be a consolidation or a transfer of major divisions within a business entity moving from one community to the next, and in the interim that person might have been affected with that kind of organizational move, that is a very real kind of example. It is not fiction. It can happen and it does happen. With all due respect, I do not think we are exaggerating the point. Call it partial closure of a firm if you want, but that is possible.

Mr. McGuigan: I am fully aware of that. Thank you.

Mr. Chairman: I wish we had more time, but we do not, so Mr. Botting and Mrs. Andrew, thank you very much for your presentation.

Mr. Dietsch: I have a question for the minister. I wonder how come the Canadian Federation of Independent Business got Margaret's copy of the announcements here.

Mr. Chairman: You should ask the minister that question, not Mr. Botting.

Mr. Dietsch: I intend to.

Mr. Chairman: Thank you very much for your appearance. Do not get drawn into that dispute.

The next presentation is from the Ontario English Catholic Teachers' Association. We have Ms. Lennon, Mr. Blair and Mr. Coté. I believe I have that correct. Ms. Lennon, welcome to the committee.

Ms. Lennon: Good morning. I said I would have to use my teacher voice in here. You seem to be having difficulty hearing people, so I will try to project.

Mr. Chairman: Just for clarification on that, the volume is turned up as loud as it will go and moving the mikes does not seem to help, so we are stuck with the system that is here in place now.

Ms. Lennon: We will cope as best we can.

Mr. Chairman: I think you know the ground rules. You have half an hour to use as you see fit.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

Ms. Lennon: To my right is Mr. Blair, who is legal counsellor and did a lot of the research for our brief. On my left is Mr. Coté. He is the first vice-president of the Ontario English Catholic Teachers' Association.

We are very happy to be here and we thank you for taking the time to listen to us this morning. The Ontario English Catholic Teachers' Association represents over 27,000 men and women teachers who teach in the elementary and secondary schools of the publicly funded separate school system.

We are committed to ensuring a fair and effective workers' compensation scheme for injured workers in Ontario. Our review of Bill 162 reveals a number of areas which require substantial amendment to achieve this end.

Bill 162 removes a right which injured workers have had since the inception of no-fault workers' compensation in Ontario in 1914: the right to a permanent pension to reflect disability. The new system is highly discretionary, removes any certainty of outlook from workers with permanent disabilities and provides significantly lower compensation to injured workers.

We would like to look at section 15 of Bill 162, which replaces the current permanent disability provisions of the Workers' Compensation Act. The proposal for a payment of noneconomic loss is considerably less generous than the permanent pension provisions that currently exist.

The section on loss of future income presents problems, as well. First, this leaves the board with the power to deem a worker to be able to earn a level of income, notwithstanding that the injured worker may be unable to find the suitable and available employment which the board claims exists. This would leave an unemployed, permanently injured worker with no entitlement to future-loss-of-income compensation payable under the act.

Second, the proposed legislation provides that the future-loss-of-income payment will be paid up to the time that the worker reaches 65 years of age, as the board considers appropriate in the circumstances. This has the dual effect of imposing a mandatory upper age limit of 65 and providing the board with the absolute discretion to terminate the payments at such earlier time as it may consider appropriate. This is totally inappropriate. OECA recommends, therefore, that the bill be amended to ensure adequate and permanent benefits to compensate for permanent disabling injuries.

Effective vocational rehabilitation for injured workers, whether their injury is temporary or permanent, is essential to any workers' compensation scheme. The proposed legislation contemplates a narrow program of rehabilitation which may be available only to injured workers in receipt of temporary benefits.

Furthermore, the vocational rehabilitation contemplated by section 19 of Bill 162 is completely discretionary. An injured worker unable to re-enter the workforce in his or her former capacity must have access as of right to a full range of effective vocational rehabilitation assistance. The result of injury by accident cannot be to relegate workers to less secure, lower-paying employment than that which they held at the time of their injury. Rather, the result must be the ability of the worker to re-enter the workforce in a permanent and meaningful capacity.

It is our recommendation, therefore, that Bill 162 be amended to include vocational rehabilitation as of right for workers who may be unable to return to their pre-accident employment. This amendment must extend this protection clearly to both temporarily and permanently disabled workers.

The section on mandatory re-employment for workers who have been with the accident employer for at least a year also presents problems. Several changes are necessary if this is to be effective. First, the exemptions to the provision must be narrowed or eliminated. The exemptions, particularly of the construction industry, render an important aspect of the legislation meaningless for a large number of injured workers.

Workers' compensation legislation must ensure fair and uniform application of the rights granted to injured workers. Exemptions which permit discretionary application of these rights under the act should be rejected. In addition, the reinstatement and re-employment provisions of Bill 162 contain no obligation to provide injured workers with modified work. An obligation on employers to make reasonable accommodation for injured workers by modifying job duties would enhance the effectiveness of any reinstatement obligation and would be consistent with existing legislative principles of nondiscrimination.

A further flaw in the re-employment provision is the absence of provisions empowering the board or the Workers' Compensation Appeals Tribunal to order an employer to reinstate where it is determined that an employer has not met its re-employment obligation under the act. The power to order reinstatement is critical to ensure that the intended beneficiaries of the re-employment obligation benefit fully from the rights granted them by the act.

We therefore recommend: that the bill be amended to eliminate the six-month limitation on the presumption concerning termination following reinstatement; that the bill be amended to eliminate the current exemptions to the re-employment obligation; that the bill include a duty to make reasonable accommodation by modifying job duties as necessary to accommodate injured workers; that the bill be amended to provide the WCB and WCAT with the power to order reinstatement or re-employment where the employer has failed to comply with the act.

As drafted, Bill 162 specifically provides that no appeal lies to WCAT from decisions of the board in respect of payments for noneconomic loss or medical assessments related to such payments, or reinstatement and re-employment under the act. The limitations of appeal rights included in Bill 162 are arbitrary and discriminatory and abridge the most basic rights of fairness and due process. OECTA therefore recommends that Bill 162 be amended

to reflect the full equal access to appeals to WCAT in respect of all decisions of the WCB.

Workers who suffer disability as a result of workplace injuries must be afforded every protection against the economic hardship and discrimination that commonly follow a disabling injury. These protections must ensure that injured workers have some economic security, the opportunity to engage in effective programs of rehabilitation and a realistic opportunity to re-enter the workforce and return to meaningful employment. They must also be confident of the protections afforded by adequate enforcement mechanisms and fair rights of appeal.

Bill 162 guarantees none of these basic protections. The one concept in the bill that is laudable is the reinstatement of injured workers, but this will only work if the concept of reasonable accommodation on the part of the employer is also present. Reinstatement must be mandatory and the board must have the power to order such reinstatement.

Upon further study and reflection since the submission of this written brief to you, OECTA has come to the opinion and the conclusion that Bill 162 should be withdrawn and completely redrafted.

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We thank you for this opportunity to participate in the hearings on Bill 162. This association is committed to ensuring a fair, effective workers' compensation scheme for injured workers in Ontario. We would urge the committee to consider seriously the recommendation of withdrawal and redrafting and, failing that, the inclusion of the recommendations outlined in this submission and grouped on page 8 of our submission.

Mr. Chairman: Thank you. The teachers are covered under the Workers' Compensation Act, correct?

Ms. Lennon: Yes, there are teachers who receive workers' compensation.

Mr. Chairman: I was interested not simply because I used to be one. I was not an OECTA member.

Ms. Lennon: We will not hold that against you.

Mr. Chairman: Others will. Do you have many dealings with the board?

Ms. Lennon: I do not know what kind of numbers to put on it, certainly not in comparison to other sectors of the industry, but we do have some and there are people who are covered. We certainly feel that the way Bill 162 is right now, teachers who would be covered will suffer losses and will not receive the same compensation they would under the present scheme.

Mrs. Stoner: With reference to the first page of your document, where you deal with the term "suitable and available employment," the section of the act that deals with that brings into play the average earnings of the employee, the personal and vocational characteristics, the rehabilitation both vocational and medical. How would you further define "suitable and available" to make it work? What would you do? They are obviously attempting to rectify a situation that is not working now. How would you add to that?

Ms. Lennon: I am going to ask Mr. Blair.

Mr. Blair: Obviously, under the current scheme, which also includes the words "suitable and available" in a variety of contexts, there have been, historically, some grave difficulties in working through those concepts and how they are to be applied and what constitutes, in the opinion of the board or WCAT, suitable and available employment.

The difficulty with Bill 162 is that, once again, we see that the question of suitable and available employment comes into play in the context of a discretionary board determination of what it considers that worker capable of earning in suitable available employment.

Mrs. Stoner: Give me other words that would give a clearer definition so it is more tied down, in response to that.

Mr. Blair: It has often been said that there is sometimes some advantage in not having absolutely clear criteria. I am at a loss and I have wrestled with this problem, as I know many injured workers' groups have, of defining precisely what suitable or available employment would be.

Our concern is that that discretionary determination not rest solely with the board. As the bill is drafted, the board has the discretion to determine what suitable and available employment is. In fairness, the question of whether something is suitable and available employment may well become a question of fact. But it is a question of fact which should be determinable clearly with regard to all of the circumstances available on each case and should not be relegated to an area of sole board discretion. Clearly, for example, WCAT should not feel itself constrained from examining that question of fact simply because it has been relegated to the board as a discretionary question, which is a very real concern the way the bill is drafted now.

In response to your question directly, it is very difficult to further define it; I do not quibble with that. The problem is that we have had a history of a very poor administration, if I can be so bold, of the determination of what is suitable and available employment, and that is what remains of grave concern to us under the provisions of Bill 162.

Mrs. Stoner: That is why I asked the question. Thank you, though.

Mr. Lipsett: On page 4 of your brief, the second paragraph: I wondered if you could help us as a committee as we further deliberate how realistic it is to apply reinstatement to the areas that you have indicated in brackets are a concern that the exclusion is there; and you emphasize the entire construction industry. How realistic do you feel it is that we can apply that, given that that industry is largely one in which the unions allocate the work according to their negotiated hiring hall provisions?

Ms. Lennon: It is not as simple in the construction industry as it is in some others, but I do not think it is fair to just totally leave that group out and exempt it because it may be a little bit more difficult to administer. That is a group of workers which is probably the most likely to require the benefits of the Workers' Compensation Act.

I think that there are, certainly in this city and in many other cities, long-term construction projects going on for seven and eight years, and to expect that there could be reinstatement of workers on those sorts of projects is certainly quite feasible. I think that through collective negotiations with

the unions some of that could be worked out, and reinstatement could certainly be handled in that way.

We feel that it is very unfair to just exclude a very large group of workers and the workers who are the most likely to need this kind of protection. I do not know if Mr. Blair wants to add to that.

Mr. Blair: Just briefly: There are, obviously, a variety of construction projects where, by the time any question of reinstatement can be addressed, the project may be concluded. There may not be a project being constructed by a particular contractor on which that injured worker could be re-employed, and there are obviously difficulties in that regard.

Long-term projects are an obvious exception to that kind of difficulty. We have, for example, the Darlington project which has been under construction for a great number of years and may well be under construction 100 years from now, for all any of us can predict. Notwithstanding that, there is very little reason we can see not to oblige a contractor to reinstate an employee to that kind of project.

Similarly, we are not here to suggest that unions have no hand in that matter as well. We recognize that the hiring hall is a long-standing institution. The hiring hall is a situation which will obviously have to be addressed. But one cannot address it by simply turning a blind eye and saying, "The construction industry is very difficult and we're going to steer clear of that." There has to be a balance struck, and the balance which this bill strikes is a balance which weighs completely against the injured worker.

In our view, that must be readdressed, and if that means engaging in some very complex consultations with all the unions involved, as well as the contractors involved, then so be it. But the answer is not to relegate that group of workers to the dust heap in terms of their potential rights under this act. That is a question the minister has clearly not dealt with in this bill in a way that we feel is effective.

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Mr. Carrothers: Mrs. Stoner has actually started down the line of questioning that I had, so perhaps I could just make a comment and ask a question really supplementary to what she did, and that is back to the "suitable and available" employment and how that kind of provision might work and your comments in here that I think you are feeling that does not really mean people would be confident they could have any kind of compensation.

We have had now a couple of people refer to the Saskatchewan situation before this committee. I do not know if when you were examining this you had a look at what has happened there, or the one in Quebec, where they have adopted similar types of changes to their workers' compensation legislation, but we did have someone yesterday explain to us how Saskatchewan is adopting, if it has not already adopted, policies that would have that concept of "suitable and available" interpreted in the context of existing work in the workplace where the worker is and talk in terms of employment opportunity.

I am wondering, just for comment from you, because I recognize that the thrust of your points was really on exercise of discretion, whether, if that sort of concept were in here, that would make you more comfortable when trying to assess what a wage loss might be and putting one through that sort of process.

Mr. Blair: Let's take an example. It would be inappropriate to determine that work was available only on the basis that a study indicated that in a particular sector there were, in an abstract sense, indicators that there was underemployment in that industry. In our view, that would not constitute available work. Certainly work that is available must mean, in our view, work that exists. The question of—

Mr. Carrothers: In Saskatchewan—

Mr. Blair: I understand that to be what you are saying, yes; and that is the thrust of what the Workers' Compensation Appeals Tribunal has advocated in its interpretation of what the word "available" means under the existing legislation.

The question of whether or not that is available to an individual worker may well involve a question of geography. Whether or not it is available in the community to which that worker has substantial personal ties, whether or not the worker is going to be required to travel or perhaps whether it is going to impact on the family situation of that worker are questions that go to the availability.

There are some factors which, in my submission, are obvious. One does not say that work is available unless the work exists. That, to me, is sophistry. One does not say that work is available if one has to urge an injured worker to travel from Toronto to Red Lake, Ontario, to accept the employment. That similarly is sophistry because, in reality, that gets that injured worker absolutely nowhere.

The question of whether work is suitable is a very difficult question and the factors may not be so easily definable, but obviously there are some things that can be put on the table as pretty reasonable expectations when we are talking about the availability or indeed, in some cases, the suitability of work.

Any attempt at defining which would at least encompass that sort of thrust would be extremely helpful. We have seen a history of the board and the WCAT now engaging in some kind of skirmish over whether or not available work means a job that can be identified. To the injured worker community, that kind of a debate is a debate that simply should not be taking place. Work is only available if it exists, in our view.

Miss Martel: I am going to continue this line of questioning, because I think it is an important one in that there may be some other considerations you would like to give.

I am not sure why members are stressing so much what suitable employment is and if we can define that all our problems will go away, because if you look at page 8 of the bill, suitable and available employment are not the only criteria the board uses in deeming. In fact, there is a list of six here that they are going to use for deeming, the last of which says, "such other factors as may be prescribed in the regulations," so it is wide open and you can blow it all over the place, as far as I am concerned, and just defining "suitable" and "available" is not going to solve the problem.

Let me ask you if you considered this: that deeming, any sort of deeming, should not be allowed unless the worker himself takes himself out of employment or refuses to accept any employment, and in only that case, as they are proposing in Saskatchewan, should a worker be deemed. Never mind trying to

define "suitable and available" and everything else because in the present policy the board already uses those criteria.

We have a problem with people being cut off now. It may be better just to say that we will not allow the board to deem anyone unless that person decides to take himself out of the workplace, period.

Ms. Lennon: We have not particularly discussed the scenario you suggest, but I think it seems reasonable and certainly should be given consideration.

Mr. Blair: I just want to add that the thrust of our submission is that the power to deem in itself is a major problem with this piece of legislation. A power to deem in the absence of the most clear objective criteria is extremely problematic. In my experience as a workers' compensation advocate, the only objective criterion is often an absolute refusal by an injured worker of employment that all of the available evidence indicates is perfectly suitable employment; that is to say, a worker refuses a job that is there. Anything short of that is extremely difficult to define.

I think Miss Martel has identified what we are saying in our brief, that the power to deem is a major problem and not one that can simply be addressed by dealing with the "suitable and available" issue. I was taken down that road by some specific questions. I would not want our comments to be interpreted as meaning that we would be satisfied if "suitable and available" could be hammered out, because all of the considerations are very problematic here. Indeed, the board's regulatory power is one that, as Miss Martel identified, is extremely problematic.

Miss Martel, in response to your question directly, I think the power to deem is one that we see as problematic in and of itself and should not be a factor in the legislation.

Mr. McGuigan: Looking at the teaching vocation, I recognize from various submissions we have had that there are problems with flexibility in rehabilitation, both the inflexibility of a job and some inflexibility of some employees. I think I can see cases where that is certainly a real problem. But it strikes me that in teaching, there is probably more flexibility than perhaps in most vocations.

I guess if you took a worst case scenario, a teacher might fall on a stairway or slip or whatever and then at the end of the day is in a wheelchair. What is the experience there? What brought this to mind was my watching television this morning. The gentleman in Alberta who defeated the Premier there is actually in a wheelchair. Can teachers carry on in situations such as that?

Ms. Lennon: Certainly. We have teachers who are in wheelchairs. How well it works out is dependent on the school board and the situation and how willing the school board is to co-operate to find a more suitable location for the teacher.

Mr. McGuigan: A newer school would have easy access.

Ms. Lennon: Yes. New buildings now are mostly handicapped-accessible because we have handicapped students, so they would be for teachers as well. Certainly there is some flexibility, but once again, the individual school board can either make life difficult or easier for the teacher. We had a very

celebrated case with a blind teacher, but that was not workers' compensation; it was in another sort of context. On the whole, I think we have not had a whole lot of trouble. School boards have been reasonably accommodating and have tried to find a better placement, one that would suit the teacher.

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Mr. McGuigan: Carrying on the worst case scenario, suppose a teacher could not teach. It sort of taxes your mind. If a person could not teach, what else could they do?

Mrs. Marland: Be a politician.

[Laughter]

Mr. McGuigan: Teachers are flexible in that they have great verbal skills and learning skills. Could you not envisage, in cases such as telephone selling or something of that sort, with the wage-loss supplement in addition to the noneconomic award they would be getting, that this bill would fit them fairly reasonably?

Ms. Lennon: To go from being a teacher to doing telephone sales would certainly be a big change. Whether it would be considered suitable, I do not know. I think teachers do have flexibility, because they are well educated and generally have good verbal skills. Certainly, they have a lot more flexibility than someone who lacks education and so on.

The loss of future income, though, and whether they would be entitled to a permanent disability pension is a question that does affect teachers. In many cases they could have an injured back, for example, where they would be in pain every day. They probably could still carry on their teaching job but they would have great discomfort. Under the new legislation, they would get a relatively small lump sum payment to begin with, as opposed to an ongoing pension that would be substantially more.

Mr. McGuigan: But it seems to me that a person in that very narrow situation I described, who has his noneconomic lump sum payment—we can argue about how big it is—and if he had the makeup in salary until age 65, at the end of the day is going to be way ahead of the person who got a 30 per cent permanent disability or even one who got a 75 per cent permanent pension. The person who had the wage loss makeup and the noneconomic loss, it strikes me, is going to be way ahead.

Mr. Chairman: I am sorry to interject here, but I think we really must move on. Ms. Lennon, we appreciate your presence here, despite your mean laugh about politicians. We are pleased that you made a presentation.

Ms. Lennon: I am something of a politician myself.

Mr. Chairman: You are elected to your position, I believe.

Ms. Lennon: Yes. So I have great sympathy and admiration. Thank you very much.

Mr. Chairman: The next presentation is from the Canadian Auto Workers, Local 1967, Nick De Carlo.

Mrs. Marland: Mr. Chairman, just as they are coming, I would like to

openly apologize to Mrs. Sullivan. When I am wrong I like to admit I am wrong. My staff has been receiving the committee Hansards and have been filing them away, which is not what they normally do. Very often when we sit on committees, it is a long time before we get the committee Hansards. I just assumed we had not had them because I had not seen them, but in fact my office does have them. I do apologize.

Mr. Chairman: Thank you, Mrs. Marland.

Mr. De Carlo, welcome to the committee. I assume you will introduce the gentleman on your right.

CANADIAN AUTO WORKERS, LOCAL 1967

Mr. De Carlo: My name is Nick De Carlo. I am the president of the Canadian Auto Workers, Local 1967, at McDonnell Douglas. On my left is Jim Crocker. He is the chairman of the compensation committee of the CAW council. On my right is the vice-president of our local, Tom Burns.

Mr. Chairman: As you know, you have a half-hour to use as you see fit.

Mr. De Carlo: First, I will just read through the presentation we have.

The fundamental goal of workers' compensation: The fundamental goal of workers' compensation should be to right the wrong. There must be acceptance of a responsibility to the injured worker to make him or her whole again to the degree possible. It must recognize that a productive worker contributes to the company and to society, and also that the worker should not suffer loss of livelihood due to a work-related injury and that he or she should be compensated for pain and suffering. Such a person should be guaranteed a place with full dignity in society, a job with no loss in wage or a stable income, as well as compensation for the pain and suffering incurred as a result of the injury.

Theoretically, Bill 162 addresses the issues of loss of enjoyment of life, wage loss and return to the job, but the reality is that it undermines all those very things. Behind all the cynical sweet talk is the reality of lower income and less security for the injured worker.

Bill 162 has introduced the lump sum payment to make up for loss of enjoyment. This is considered an advance because it compensates in a new way. Now, so the story goes, the worker is no longer a piece of meat subjected to the meat chart; he or she is a human being. This is recognized by payment for pain and suffering caused by the injury.

But the truth comes through when it is argued that the injured worker should not have a pension, because he or she can get a job and then be earning not only the income from a job but also a pension. What justice is there in that? It is argued. But we ask, what happened to the concept that the worker who is injured should be compensated for loss of enjoyment? Obviously, the worker who has a permanent back injury, even though he may be able to get another job, constantly suffers from that injury. A pension can serve as compensation for loss of enjoyment.

The fact of the matter is that a lump sum is cheaper than a pension and that is the real reason it is in Mr. Sorbara's law. It has nothing to do with compensation for loss of enjoyment. It is primarily a cost-cutting feature

that does nothing to improve the situation of the worker. The worker is left with no guarantee of a job or permanent income, much less compensation for loss of enjoyment.

Bill 162 introduces wage-loss payment. This is supposed to compensate for loss of income. The wage-loss payment is a sham. Theoretically, it is to provide for loss of earnings due to injury. Practically speaking, as organization after organization has told these hearings, the deeming provision eliminates any real protection for the worker in this area.

Bill 162 supposedly provides for reinstatement, but the reinstatement provisions in the bill have loopholes that leave it open to companies to do absolutely nothing to reinstate the worker. Even worse, they give the company more leeway to victimize the injured worker. The company is free to override the collective agreement in a unionized workplace and to pick and choose between workers, thus potentially undermining the very organization the workers can use to protect themselves. At the same time, there is no mechanism to force the company to provide a job in the workplace that is unionized and especially not in the unorganized workplace. The company has more options than ever and no greater responsibility to the worker.

Bill 162 reduces the right of appeal. This reduction does nothing to help the worker. It does reduce costs by reducing the number of successful appeals and by reducing the number of levels of appeal.

Finally, the provision to reduce costs to the company in return for efforts to improve the workplace may be ineffective, because the company can make token efforts to get the reduction. At the same time, those reduced payments will create more pressure to disqualify workers because of lower income for the Workers' Compensation Board.

The worker becomes just another number: The lump sum payment severs the injured worker and alienates him or her from the compensation system. A worker with a pension has an ongoing opportunity to fight for improved benefits. The worker can always lobby for improved coverage by a cost of living allowance to increase the pension, etc. However, the lump sum is final. You have two opportunities to appeal and that is it. Bill 162 eliminates any permanent or lasting liability on the part of management or the government. The worker is now a number.

So much for the elimination of the meat chart. So much for the elimination of the impersonalized WCB. So much for the increased dignity and recognition of the worker. A system that is systematically designed to reduce costs at any cost can do nothing but impersonalize the process.

Everyone criticizes the WCB, the impersonalized bureaucracy that spits out workers with reckless abandon. Everyone criticizes the discretionary power of the WCB. But Bill 162 gives more discretionary power to the board in the following ways:

1. Some decisions will no longer be reviewable by the tribunal.
2. Details of many sections of the legislation will be left up to the WCB to put into regulations.
3. These will include such areas as the factors to consider in determining an injured worker's phantom wages.

4. The switch from permanent pensions to possible wage-loss benefits greatly increases the role of the WCB's discretionary power.

5. More power for the board doctors, along with the reduction of the right to appeal, will ensure more arbitrary decisions.

Bill 162 gives the bureaucracy of the WCB looser laws, with more leeway to interpret the rights of workers. Past experience shows that means more workers are hurt. Workers will be rushed through the system. Rehabilitation is minimized by the restriction to those on temporary benefits. Privatization of the rehabilitation process will guarantee that private companies will make money by forcing people back to work.

Despite its billing by the government of Ontario, Bill 162 is an alienating law that is sure to provoke reaction if it is passed by the Legislature.

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Our experience in the workplace at McDonnell Douglas: Local 1967 represents the in-plant workers at McDonnell Douglas. There are literally hundreds of accidents each year at McDonnell Douglas. In the first three months of 1989, there were roughly 100 incidents reported at the plant hospital, and not all cases are reported.

What do we think Bill 162 will mean at McDonnell Douglas? Currently, the company is switching over to just-in-time production; I think most people are familiar with the term. This means the company will be concentrating on getting rid of people who cannot perform at 100 per cent and cannot be relied on to be at work because of injuries. Bill 162 does nothing to prevent this.

Job placement will be more difficult. The company will have the right to override the collective agreement. There is an office local and a plant local. Workers who move between the office and the plant do not carry their seniority. With the new law, the company could arbitrarily place someone in a job in another local. That person would lose his or her seniority rights and all that goes with them. They can place a junior person on a job or in a classification that has senior people. These things will put an emphasis on disrupting the workforce rather than on reinstatement or accommodating the worker.

The alternative is a compensation law that forces management to accept responsibility for injuries at the workplace and to be accountable for them. The company must be responsible to provide the worker with a livelihood, to ensure the worker's right to be restored to his or her original income and to provide a pension to compensate for loss of enjoyment of life.

This means that the worker must be accommodated with a job or provided with an income equal to the income at the time of the loss of his or her job. That income must be at the same rate as for someone who remains on the job the injured worker has been removed from. What I mean there is that the principle should be that if you are removed from a job, you should also gain in your income any cost-of-living increases or whatever that are gained for that job.

The company must pay extra costs to provide the worker injured at its operation with the protection listed above. At the very least, a new law has to move genuinely in that direction. This approach would eliminate a lot of the workers' appeals, because the onus would be on the company to provide the

job or income, not on the worker to prove he or she can get back into the workforce. This type of incentive is the one that will truly bring companies to take accidents and workplace health and safety more seriously, and it would reduce the necessity to constantly monitor injured workers, because the company would now be responsible to provide livelihood, not the WCB.

The current system allows management to escape responsibility. Bill 162 intensifies the problem by reducing workers' rights to compensation and the process of appeal. Making workers more powerless inevitably makes the companies less responsible.

In conclusion, Bill 162, despite the fanfare, is a long step backwards. It must be scrapped. Bring in a new law that truly improves compensation for workers in this province.

Mr. Chairman: I have a question, and I know others do too. On page 4 of your brief, you talk about reinstatement. I am somewhat confused. You say it will give the company more leeway and the freedom to override the collective agreement, but when I look at the bill itself—I know not everyone has studied the bill in detail—subsection 54b(8) states, "Where this section conflicts with a collective agreement that is binding upon the employer"—I think that is what is being implied in your brief—"and the obligations of the employer under this section in respect of a worker afford the worker greater reinstatement or re-employment terms in the circumstances than the terms available to the worker under the collective agreement, this section prevails over the collective agreement."

I am not a legal person, but it reads to me that only if this gives you more protection than the collective agreement does this prevail over the collective agreement. That is how I read it.

Mr. De Carlo: I do not have a copy here. Could I just have a look?

Mr. Crocker: If I might, we talked about that earlier this morning with regard to the letter Mr. Sorbara sent us. I think your interpretation is correct. One of the problems we see, though, coming out of collective agreements, is that there are many smaller plants. I do not know what Mr. De Carlo's personal language says. To say the bill is giving the worker a right to return to the workplace is one thing.

Unfortunately, the minister does not provide the details of how that is going to be accomplished, which is our big problem. It is interpreted that where there may be better language in some of our collective agreements—and that is a possibility; I do not know whether that applies to Mr. De Carlo's language—that is fine. Other than that, we would like some information. What we requested from him is, how does he expect us to accomplish that?

Indeed, if we recall the brief that General Motors provided, it even mentioned that. They really do not understand how this is going to happen. First of all, they agreed with us that seniority provisions should be maintained, because that is how they keep order in large plants. That is fine. So they were concerned, as we were, about seniority provisions.

Second of all, they were in a quandary. Just to say that the company has to take injured workers back is one thing; how that is going to be accomplished is yet another. What the government has basically done is taken the onus from itself and put it on the corporations and the unions to try to work it out, which really gives us nothing more than what we have got now.

Mr. Chairman: I understand that. I know that a lot of large employers particularly like the seniority provision. It makes things a lot simpler.

Mr. Crocker: Certainly the Ford Motor Co. does. I can assure you of that. General Motors too, obviously. They said so in their brief.

Mr. De Carlo: If you take it apart, the problem becomes how do you interpret greater reinstatement or re-employment terms. Let's take each example I mentioned. In the case where someone is put into another local—say, either from the office into the plant local or from the plant into the office local—first of all, does the collective agreement apply if he is put into a local which has a different collective agreement from the one he was originally in? Does this apply in that case? It is not clear.

Second, if they are reinstated, say, from the plant local into the office local and the company interprets it to apply and it gives that person seniority that he does not have under the collective agreement of the office local, then that causes a problem within the office local. Those are two ways, in terms of interpretation.

The other issue is seniority. I will just go through my examples here. In the case of seniority, I think that one is clear. Again, it depends what you mean by greater terms of reinstatement. If you reinstate somebody with greater seniority than he had or greater seniority rights than he had, it may give that person more protection in the short run, but it will disrupt the union and in the long run it will hurt that person too. That is a very clear understanding within the membership and within the reality of our existence as a union local, that if you cannot protect your system of protecting everybody, then you cannot protect anybody.

Mr. Chairman: Thank you. That is helpful.

Mr. Lipsett: That was exactly where my line of questioning was as well. I guess, given all those other things, I will just ask the question, is that section not in the best interest of the injured worker?

Mr. De Carlo: Which section?

Mr. Lipsett: Subsection 54b(8), which we just discussed.

Mr. De Carlo: Which allows the override of the collective agreement?

Mr. Lipsett: Yes.

Mr. De Carlo: I would say in the long run, no. What it does is it gives enough leeway that the company can use it as it chooses. Sometimes they use it one way, sometimes they use it another way. Because of that, in one case it could hurt that injured worker and in another case it could hurt somebody else.

Mr. Lipsett: How could the company use it one way one time and another way another time?

Mr. De Carlo: They do now.

Interjection: This section is not in law now, is it?

Mr. Lipsett: This section says that in the provision where this provides the worker with greater reinstatement and re-employment terms, it will prevail and only it.

Mr. De Carlo: First of all, you are making one assumption, which is that the worker is reinstated. There are a lot of loopholes in the obligation to reinstate in the first place. If the company chooses to reinstate, then this comes into effect. Correct?

Interjection: They must reinstate for six months.

Mr. De Carlo: They must, but there are loopholes.

Mr. McGuigan: Then the worker can stand on the highest ground that is available, whether it is the act that is the high ground or whether it is the collective agreement that is the high ground.

Mr. Lipsett: Whichever is the greater.

Mr. De Carlo: Assuming first of all that the worker is reinstated. You are assuming that. My first point is that there are loopholes to being reinstated in the first place.

Mr. Lipsett: I am just asking about—

Mr. De Carlo: I realize that, but it is important to deal with it in context. Once the company has, in its wisdom, decided to reinstate the worker, then it has options of where that worker is going to go and it will play the different options in terms of the collective agreement. In the case where there are two locals, they could provide a job in one or provide a job in another, whichever works to the advantage of the company. It can also be used to undermine seniority rights. Those seniority rights protect that compensated worker as much as they protect everybody else. In so far as their seniority rights are undermined, in the long run it is going to affect them as well, because they will tear apart the collective agreement.

1130

One final point is that an alternative is to guarantee that the worker either has a job or income, in which case, if he cannot be reinstated, he will have the income to make up for it. That is the way to really protect the worker. This way gives openings that allow for a lot of games to be played and a lot of room for management to play those games.

Mr. Crocker: I guess our discussion is not so much on who has the greater authority, whether the collective agreement or this bill has the greater authority. I do not really think that concerns us too much. We have no problem with the fact that injured workers have some authority to get back to work. That is fine. How that is going to be accomplished is an area of concern with us and an area of concern to many employers. They have said so before this committee. We do not talk about job modification, we do not talk about ergonomics, we do not talk about a lot of things. To just blankly say that the worker is going to be put back into the workplace is really not fair to any of the parties concerned. There has to be some mechanism to carry that out. I think that is what we are trying to impress upon you.

Mr. McGuigan: Going to your statement and then going to—is it section 54a?

Mr. De Carlo: Subsection 54b(8).

Mr. McGuigan: How does this take away from the situation that presently exists? You have your collective agreements and you have that problem, which I see as a problem, of a person going from one area of a plant to another area in a plant and running up against a different collective agreement, but you have that problem now. I certainly assume you have that problem now.

Mr. De Carlo: That is right.

Mr. McGuigan: How does this take away from it when the act really says in plain language that you can stand on the highest ground?

Mr. De Carlo: You are talking about between two different locals right now? Is that what your question is directed to?

Mr. McGuigan: Yes. I think, if I understand what you are saying, that problem presently exists and the presumed passage of Bill 162 would not change that situation.

Mr. De Carlo: Currently, if someone is able to return to work, the company has an obligation under a collective agreement to return the worker to our local with all the rights that go with it.

Mrs. Sullivan: In your own local?

Mr. De Carlo: In our own local.

Mr. McGuigan: And they would after this.

Mr. De Carlo: What that does is it eliminates that obligation. If the company chooses to put them in another local, it is overridden.

Mr. McGuigan: No.

Mr. De Carlo: Why not? Tell me why it is not.

Mr. McGuigan: Because, using my own language again, I guess, the person stands on the higher of the two grounds, either the ground in the collective agreement or the ground in the proposed Bill 162.

Mr. De Carlo: But which is the higher of the grounds?

Mr. McGuigan: You choose that.

Mr. De Carlo: No, you do not, because you have to go through an outside process that will decide which is the higher of the grounds. The person has the right to appeal to arbitration or whatever or the company has the right to, under its obligations in the act, to appeal what decision it makes. It will be decided by somebody outside it. The worker does not have the option of choosing which. Somebody will decide which is the better. You can argue that one is higher than the other, and that would be your argument, but the worker does not choose that. The worker can only make an argument. The law will define it.

Mr. McGuigan: I still cannot see how, at the end of the day, the person would end up standing on lower ground than he presently would be.

Mr. De Carlo: Let me put it to you this way: if the company can reinstate you into another local, argue that you are on higher grounds with that reinstatement and override the collective agreement of that local to put you in there, then you are there. There is nowhere else you can go at that point. You have been overridden.

Mr. McGuigan: I guess we are chasing our tail here, but I cannot see where Bill 162 does that overriding you say it does.

Mr. De Carlo: I cannot see how it does not. Maybe I am not understanding something, but I do not understand why you do not see it.

Mrs. Sullivan: Actually, my questions were on this very point. I have marked your discussion on page 7 and your discussion on page 4. I suppose that I really follow directly from where Mr. McGuigan was going in terms of how labour itself would define which would be the most suitable or the most liberal, if you can cope with the word, reinstatement terms. Do you yourself believe that one of the very important things about the injured worker is getting him back to work? In that case, do you feel that unions themselves can make some kind of an accommodation for reinstatement to move a person from local to local?

Basically, what you said so far is that under your collective agreement you must go back to the same local for reinstatement after injury. How can labour itself come to terms with an injured worker going back into another local? How can they maintain a seniority that is not difficult for other workers in the new local?

Mr. De Carlo: In my mind, that is not the issue. The issue is that the company is responsible for that injury; that person should be going back to where he came from, and there are accommodations that can be made and should be made so the person goes back to where he came from.

Mrs. Sullivan: We have heard some examples, for instance, in the mining industry, where it is very difficult, because of the kind of work that is involved, for a worker to go back into the same situation or for modified work to be available. However, there may be other situations that the same employer can offer that would enable that worker to be back in the workforce with all the dignity, the responsibility and opportunity for improvement that that allows.

Mr. De Carlo: Okay. Again, where I am starting from is that the responsibility is on a company to provide the job or income; in other words, if it does not have the job, to provide income. Once you have solved that problem, I think a number of other ones---

Mrs. Sullivan: Or a modified work situation.

Mr. De Carlo: Yes, that is a job.

Mrs. Sullivan: Or alternative work.

Mr. De Carlo: If you let me finish what I say, I will tell you exactly how I see it. The responsibility of the company is, and must be, to provide job or income, and if you provide job or income, then the incentive is going to be on the company to provide work that it can provide when a lot of times it says it cannot. The most significant problem is that the company has a lot of leeway to avoid the accommodation of a worker. There is all kinds of

leeway and this new law does nothing to solve that problem.

I find it hard to imagine that you cannot accommodate somebody, because my argument goes that the company's responsibility is to do that and provide income if it does not, and there are a lot of things you can do in terms of creating new jobs.

But let's suppose there is a small company or an extreme case when there could not be anything done. Yes, at that point you could look at some accommodation, but you have to do it in a way that is consistent with collective agreements and you have to do it in a way that works along with the unions involved. And, yes, unions will do anything they can to deal with that problem. When you put it in law that they will override the collective agreement, what you do is give the option to the company in terms of how it is going to be applied, and that is where the problem is.

Mrs. Sullivan: I still do not understand. You continue to say that the bill, and particularly subsection 54b(8), would override the collective agreements. I do not concur with that. I think the bill is quite specific in—

Mr. Crocker: We have said repeatedly it does not really matter whether the bill is superior or the collective agreement is superior; it does not really matter. The problem is we are still not doing anything to place those injured workers. We say the injured worker has the right, but then we stop. We do not want to talk about ergonomics. We do not want to talk about job modification. We do not want to talk about any of those things that could, and will, be effective.

We, in many of our collective agreements, force the companies to do some of this, but we are falling behind a little bit too because we only have so much power under our collective agreements. If the bill did the job it was supposed to do, subsection 54b(8) would not have to be there because it really does not matter who has the authority as long as the injured worker has the authority to get a job. Who cares whether it is granted through the Bible, through the collective agreement or through Bill 162? We really do not care, as long as that injured worker has some authority, but right now he does not and certainly this bill does not provide that for him or her. That is our problem.

Mr. McGuigan: There is an old saying that you can bring a horse to water but you cannot make it drink. Every time we bring you up to that point of overriding, you change your argument to something else. I guess we cannot overcome that.

Mr. Crocker: I do not think we are, but—

Mr. De Carlo: Because the option is an arbitrary option, the company has room to play with that depending on where it reinstates somebody. It chooses where it is going to reinstate the person, and it makes the choice given the different things it has to look at. That is the problem.

1140

Mr. McGuigan: I would make the point that this act does not change that.

Mr. Chairman: Could we move on? We have time for one very short question.

Miss Martel: It is on the same point. My concern in reading that section is this: If you look at it, Mr. De Carlo, you will see that nowhere in that section does it say who is going to determine whether this section conflicts with a collective agreement or whether the obligations under the bill are better than the collective agreement.

I have some serious problems leaving a section like that wide open, not knowing who is going to interpret it. I do not know if you want to make a comment on that or if that is part of the problem you are having with that whole section.

Mr. De Carlo: That is exactly my point. The option is up to the company. The interpretation of the thing is totally at the discretion of a company and how it is put into effect. There is no control by the worker over that choice at all. That means they can play different options precisely because there is nowhere to go. There is nowhere to go and there is no clear definition of what is a higher right.

Mr. Chairman: Mr. De Carlo, Mr. Burns and Mr. Crocker, thank you very much. You have provided us with an interesting discussion.

The last presentation of the morning is from the Canadian Printing Industries Association. I believe Mr. Peppin and Mr. Heron are here. Welcome to the committee, gentlemen.

CANADIAN PRINTING INDUSTRIES ASSOCIATION

Mr. Heron: I would like to introduce you, first of all, to Murray Peppin. He is the operating manager for our Toronto and southwestern branches of the Canadian Printing Industries Association. My name is Rick Heron. I am general manager for MacLean Hunter Printing. Today I am speaking on behalf of the CPIA as the chairman of our government affairs committee.

First of all, I thank the standing committee on resources development for giving the Canadian Printing Industries Association the opportunity to appear here today to present our views on Bill 162, An Act to amend the Workers' Compensation Act.

Before I delve into the subject, however, I would like to share with you some facts about the pre-press, press, bindery and allied industries that make up the industry in Ontario. Our industry is composed of firms engaged in the production of commercial printing. Some commercially printed products include business forms, newspapers, books, maps, catalogues, stationery, magazines, stamps, banknotes, stocks and bond certificates, printed advertising matter and much more.

In addition, the printing industry has allied establishments engaged in providing specialized services. Some of these services include typesetting, bindery work, manufacture of colour separations for colour printing and allied post-printing converting or finishing operations.

According to recent information from Statistics Canada, Metropolitan Toronto and the city of Toronto, our industry, together with publishing and allied industries, generates revenues of \$28.9 billion annually in Canada. Commercial printing has total sales of \$6 billion, of which 50 per cent is generated in the province of Ontario.

With some 3,800 firms, printing ranks as the largest industry in Canada when measured in terms of establishments. Ontario houses just over 47 per cent of those establishments. In terms of the number of employees, commercial printing is the fourth largest industry in Ontario and the second largest in Toronto. Coupled with publishing, we are the largest employer in the Toronto area.

Our industry satisfies many of the policy objectives of government: We provide stable career employment to people in Ontario; we consume a renewable Canadian natural resource as a prime raw material; we are a low-level industrial polluter, and we are a low-level energy user. We feel that the printing and allied industries are crucial to the economic, social and cultural progress of this province. Our production is based on the latest technology and our employees are well trained and among the highest paid in Ontario. Clearly, then, the printing industry is one of Ontario's most important and economically vital manufacturing sectors.

We have some observations about the act. The Canadian Printing Industries Association, Toronto branch, supports the promotion of sound industrial relations, safe working conditions and equality of treatment and opportunity of employment, provided such programs do not impose an unreasonable financial or competitive burden on the printing industry.

As such, our association is concerned that the present system of workers' compensation in Ontario has not been responding in a fair and appropriate manner to the needs of injured workers. Furthermore, we are also concerned with the dramatically increasing costs of compensation under the existing system.

The present method of basing compensation on the degree of medical disability does not adequately compensate workers for the loss in wages due to illness or injury suffered in the workplace. Conversely, there are workers presently receiving lifetime disability pensions who have been able to return to work and have experienced no substantial economic loss.

The Canadian Printing Industries Association has reviewed the proposed amendments in Bill 162 and has concluded that the changes, for the most part, address the inequities inherent in the present approach to compensation and appear to be sensible and warranted.

The proposed concept of a dual award for both economic and noneconomic losses associated with permanent disability has the potential to redistribute financial resources in favour of the seriously disabled while reducing the benefits of those workers able to return to work. We feel this would create a fair and more cost-effective system.

However, there are two sections in the proposed legislation, 54a and 54b, which we feel are crucial to its success, new requirements governing vocational rehabilitation for injured workers and the reinstatement or re-employment of injured workers by their employers.

The first will be achieved if the Workers' Compensation Board continues to pursue its vocational rehabilitation strategy of early intervention and provision of more intensive services, including the use of external agencies.

It is the second point, however, the requirement to reinstate and re-employ workers who have recovered from their injuries, that could present some difficulties to employers. It is essential to clearly define as soon as

possible what constitutes suitable and available employment for a worker. Not only does this need to be spelled out in the regulations, but also how this rehiring requirement, with its precedence over collective agreements, is to be compatible with the seniority system as it presently exists in the workplace.

In addition, we urge the government to reconsider its decision not to bring existing pensioners under the new provisions contained in Bill 162. We do not feel that fully indexed disability pensions should be permitted to continue in those instances where the worker suffers no loss of earnings. Furthermore, most employers in the private sector cannot afford indexed pension plans themselves.

As an industry, we are greatly concerned with the financial impact posed by these amendments on Ontario's already expensive workers' compensation system. Our industry is already experiencing problems with increasing assessments and would like government to undertake investigations as to why the benefit costs have risen so high.

While we welcome the proposal to cease compensation to injured workers at age 65 as opposed to the current system of continuing for life, we can see a very cumbersome record-keeping system emerging to keep track of the pension benefits for injured workers. We therefore urge government to ensure that the annual cost of these proposed amendments to the Workers' Compensation Act are of compatible magnitude to the cost under the present system and will not impose a new financial burden to Ontario employers.

Our concerns are heightened since any estimate of the future cost of such a proposed system tends to be highly speculative at best. We are of the opinion that it is absolutely critical that the Workers' Compensation Board and government work together to ensure that the revised act, its regulations and the internal policies of the board all operate in concert to ensure that this dual award system operates as originally intended.

To conclude, and in summary, we recognize the complexity of the proposed changes involving vocational rehabilitation, employer obligations for workplace reintegration of workers and the criteria for establishing loss of earnings and degree of a worker's permanent impairment. These changes have been needed for some time, but they do have the potential of creating policies and adjudication procedures at the board level which, if too leniently applied in determining expected future loss of earnings, could have disastrous financial consequences for not only the compensation system but industry as a whole in Ontario.

I would like to thank you for providing this opportunity to express the CPIA's views on this act to amend the Workers' Compensation Act.

Mr. Chairman: Thank you, Mr. Heron.

Mrs. Marland: On page 5, you make this very clear, concise statement, "While we welcome the proposal to cease compensation to injured workers at age 65 as opposed to the current system of continuing for life, we can see a very cumbersome record-keeping," etc. I want to ask you why you welcome the cessation of pensions at age 65 for someone who has sustained a workplace injury.

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Mr. Heron: We are not saying that. We are saying that in the current

system it carries on past 65. We welcome the idea of having a setup for pensions because some people do not have an effective pension program. Our concern is that the act, as it now reads, could lead to a pension program for injured employees that exceeds that of the current employer and that you could have instances where employees could suffer injuries late in their careers and end up with higher pensions than those who worked through to retirement age.

Mrs. Marland: If you sustain a workplace injury that entitles you to compensation, what I have difficulty in understanding is: When you have a birthday, does your disability suddenly disappear and you do not need any more compensation?

Mr. Heron: No. My understanding is that in the proposed act, they will be eligible for a pension. We are questioning the means by which that is going to be co-ordinated or applied by the board, and we are worried about the record-keeping procedures and the fairness for everyone involved, including the employers who are paying for that pension.

Mrs. Marland: My understanding is that under the proposed bill the pension would stop at age 65.

Mrs. Sullivan: The retirement pension kicks in then.

Mr. Heron: That is right.

Mrs. Marland: I know the retirement pension does.

Mr. Heron: That is what we were referring to here, the retirement pension.

Mrs. Marland: You are only referring to that?

Mr. Heron: Yes, I believe that is right.

Miss Martel: I have a question on page 4 where about halfway down you urge the government to reconsider its decision not to bring existing pensioners under the new provisions and, second, you state that you do not feel that fully indexed disability pensions should be permitted to continue where there is no loss of earnings. I am just wondering what in fact you are suggesting in that paragraph.

Mr. Heron: What we are suggesting there in our first statement on existing pensioners under the new provisions is that we do not understand the need for the grandfathering clause on that. On the second part, fully indexed is our main concern. As private employers, most of us have looked at the advisability of indexed pensions and we have recognized for competitive reasons that we cannot afford those costs in the future, because we have no idea what implications that can have. We are very concerned that putting indexed pensions for employees formerly of the private sector is an unfair burden on the private sector.

Miss Martel: I am still not quite clear. In that section, you are talking about people who already have a pension: some 116,000 people in the province now. If I read your second line, what it seems to say to me is that all of those people who are on a pension now, who have received a fully indexed pension now, if they are not suffering a wage loss then they should have their pensions deindexed. I am wondering if that is what you are suggesting, because that is my reading of that section.

Mr. Heron: Just one moment. I will ask for an interpretation.

In the second sentence, we are referring to new pensions and we are not referring back to the first sentence. We are talking about newly injured workers who would have a retirement pension that would be fully indexed under the act.

Miss Martel: Do you mean the retirement pension after age 65?

Mr. Heron: Right.

Mr. McGuigan: My question has been answered.

Mr. Chairman: If there are no more questions, Mr. Peppin, Mr. Heron, thank you very much. We appreciate your presentation.

This afternoon we commence at two o'clock and we have a full agenda for the afternoon.

The committee recessed at 11:55 a.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
WEDNESDAY, MARCH 22, 1989
Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

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Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Clerk pro tem: Manikel, Tannis

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Communications and Electrical Workers of Canada:

Pattinson, Glenn, Vice-President

Cwitco, Gary, National Representative

From the United Steelworkers of America, Local 9176:

Dockstader, Doug, Vice-President

Young, Bernie

From the Orillia/Muskoka District Labour Council:

Waters, Dan, President

From the United Food and Commercial Workers International Union, Local 114p:

Shushelski, Frank, Chief Steward

From the Canadian Auto Workers, Locals 80 and 303:

Crocker, Jim, Workers' Compensation Board Co-ordinator

Spence, Norah

Anselmi, Frances

From Inzola Construction (1976) Ltd.:

Cutruzzola, John, President

From the Employers' Advocacy Council:

Cryne, Stephen, Provincial Chairman

Wadsworth, Peter, Policy Chairman

Vivash, Norm, Treasurer

From the United Steelworkers of America, Local 8782:

Kitchen, Ray

Leibovitch, Peter

From the Energy and Chemical Workers Union, Local 513:

Hart, Patricia

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, March 22, 1989

The committee resumed at 2:06 p.m. in the Ontario Room, Macdonald Block.

Mr. Chairman: The standing committee on resources development will come to order. I would like to express my appreciation to the technical wizards who have put together a better sound system for the afternoon. That is very much appreciated.

The first presentation is from the Communications and Electrical Workers of Canada. If you gentlemen would introduce yourselves to the committee, we could proceed.

COMMUNICATIONS AND ELECTRICAL WORKERS OF CANADA

Mr. Pattinson: My name is Glenn Pattinson. I am vice-president, industrial, for the Communications and Electrical Workers of Canada, and my partner here, Gary Cwitco, will be presenting our brief. He is our representative on health and safety.

Mr. Cwitco: Mr. Chairman and members of the committee, it is a pleasure for us to have an opportunity to address you on a piece of legislation which we consider to be fundamental to the future of injured workers in this province and to give you some our insight into why this legislation is wrong and why it should not be passed.

But in suggesting to you that we are pleased to be here to be able to share our views with you, we are also disappointed that not all the people who likewise want to share their views with you have an opportunity to do that. It is our understanding that the government members of the committee have voted on at least two occasions against hearing all individuals and groups who wish to make deputations. We find that, given the enormity of the changes being made to the compensation system through this bill, to be deplorable.

Also, as we are pleased to be here to present our views, as we come before you we are also concerned about what we see happening and we wonder whether we are not simply engaged in some kind of legislative dance—both you and we—in terms of discussing what there is about this bill that needs to be changed, when it is our understanding that the Workers' Compensation Board has already approved, and is spending \$4 million on, the implementation of the provisions of Bill 162.

At the same time, the minister has a budget in the range of \$160,000 with which he is trying to sell the bill at the same time the committee is trying to study it. In that kind of environment, we are not sure exactly what role this committee will ultimately have to play and, in that context, what role we have in making our comments to you. We are here in good faith to explain to you why we oppose the bill and why we think it should not be passed, but we have to say we have some doubts about the efficacy of the process we are engaged in.

You have our brief before you. We are not going to read it to you. What we would like to do, however, is highlight some of our concerns. Our objective, I guess, really is twofold. The first part of our objective is to

lend our voices to all of those who oppose the bill, to suggest to you that we find it to be wrongheaded; that we find it not to address the real problems facing injured workers today; that the minister, when he decided how to resolve the problems that are being faced in the compensation system, chose to resolve the perceived problems of employers rather than the real problems that injured workers face before the board.

The second thing we want to say to you is that if this bill becomes law, we will be faced with an ever-increasing problem of injured workers seeking appeals; we, as union representatives, but not just us. Members of provincial parliament will also be faced with increasing numbers of workers coming to their doors seeking assistance in dealing with their problems before the board, because there are going to be more problems with the board. There are going to be significantly greater problems before the board.

Professor Weiler, when he suggested the dual award system originally, back eight years ago, suggested that the system had the potential for more conflict. Let me suggest to you that he was 100 per cent right in that; there will be more conflict and that injured workers in ever-increasing numbers will be at your door and they will be at our door, seeking assistance.

1410

But when they come to your door, not only will they be seeking assistance; they will want to know why you let this happen to the compensation system. While we are participants in this process, you are part of the decision-making in this process. If you let this happen to the workers' compensation law in this province, workers, and injured workers in particular, will want to know why, because fundamentally we see that what will happen as a result of the amendments contained in Bill 162 is the gutting of the compensation system.

You have already heard from many and you will hear again about all the problems that will come from deeming, all the problems that will come from giving the board increased discretion over the lives of injured workers. We are talking about, in section 20 of Bill 162, giving the board not simply decision-making power but, fundamentally, law-making power in the sense that it will be able to write regulations, subject to the approval of cabinet, of course. The committee, whose job it has been for many years to review the operations of the board, is going to find itself in that peculiar situation of having the opportunity to review the mandate where the board has the opportunity to write the regulations.

It has been my experience over the years that this committee in some of its previous incarnations has found occasion to criticize the operation of the board, has found occasion to say that the board in some circumstances has abused its discretionary power; perhaps not in those words, but certainly there has been a sense that the way in which the board has operated has not been entirely in the interests of the injured workers the board was established to serve.

Now what we will find if Bill 162 becomes law is that the board will have the right to write regulations. The minister's proposed amendment that will give us the right to appeal everything to the Workers' Compensation Appeals Tribunal is not really going to help us very much if the board is going to be writing the regulations. If they do not like a decision the appeals tribunal comes out with, they will just regulate it. So the solution of having an independent review seems to us to be totally gutted by this legislation.

I want to concentrate on one thing I think is fundamental in the thinking that has gone into this bill, that is, that somehow workers who are receiving permanent partial pensions are overcompensated. The myth that there are overcompensated workers is just that. It is a myth, and if I do nothing else or we do nothing else today we want to explode that myth.

We have heard, I cannot even count the number of times, what I refer to as the parable of the lawyer and the construction worker, where both lose a hand in a work-related accident. The lawyer goes back with a partial disability pension, and that lawyer—we are not sure whether it is a man or a woman—continues up the job ladder with no problems, with promotions, and has this permanent pension. The construction worker is getting a similar pension but that individual worker has had his life ruined.

We have heard that parable from the minister many times. We have never been able to find the lawyer who lost his or her hand, but we have real live human beings, workers who have been injured at work, who have gone back to work with permanent pensions, and have gone back to their old job and are earning their regular pay. Those are the people the minister, in a very fundamental way, is blaming for the ills of the system.

I want to suggest to you that that kind of attack on honest injured workers who are not ripping off the system, who are not cheating in any way, adds insult to the injuries they received in the workplace, and it is unacceptable.

Let me give you only one example; the time we have before you is not long and I want to give you one example. A telephone operator, a woman working on a switchboard, used a timing device with her right hand. The timing device was used to time long-distance calls. Every time someone would call into her switchboard and want to make some kind of call, she would have to take a computer card, put it in a slot, punch the timer to start it, take the ticket out and put it away, because she handled more than one call at a time, put another ticket in and, when the call was finished, she would punch it again.

From a seated position it required approximately 13 pounds per square inch of pressure to activate the timing device. Hundreds of women were injured, some of them seriously. The one woman I want to talk to you about was injured so that she missed a significant amount of time on temporary total benefits over a series of months. Ultimately surgery was done on her upper back. She was evaluated for a permanent pension. She was evaluated at seven per cent. She has gone back to work. She was able to go back to work for two reasons: first, our union was able to make modifications in that tool so she could go back to work and, further, so that no other woman would have to use that tool and also become injured; second, the advance of technology or the change in technology has made the tool not necessary any more.

That woman is back at work doing her regular job, receiving her regular wages and getting a seven per cent pension. I want to suggest to you that there is not a single one of her co-workers, not one, who would trade the pain and suffering she went through for a seven per cent pension. Not one would buy that situation. Not one would want the difficulty she has in getting dressed because she cannot raise her arm above shoulder level. Not one would want the extra expense she has in hiring someone to help her with cleaning her home because she cannot do the lifting. Not one.

You should not think that when she gets a seven per cent pension she is getting seven per cent of her current wages. She is getting seven per cent,

adjusted of course, of her pre-accident earnings. There is not a single one of her co-workers who would trade places with her.

That woman and people like her are the people we believe the minister is blaming for the problems in the workers' compensation system by saying that those people are overcompensated and those are the people who have to have pensions taken away from them so that the system will serve the interests of the great majority of workers. We reject that. We reject it as fallacious. We reject it as cruel.

The minister, in the principles he put forward, put forward the idea of compensation for noneconomic loss, and that is a laudable concept. But what he gives us in concept he takes away out of our pockets, and that is unacceptable and that needs to be stopped. It cannot be written into legislation that the people who are disabled as that telephone operator is, as many other workers in this province are, are the people who are responsible for the problems in the system and the people who need to be punished, because that is what Bill 162 will do, along with all the other things it will do.

We do not have time in 20 minutes—God, our time is almost up—to list all of those things, but I wanted to make that point. I wanted to make that point as strongly as I possibly could, that the myth of the overcompensated worker is that, a myth, and that if it is enshrined in legislation, the old method of blaming the victim—that we have seen in the whole health and safety area for so long, that we have seen in terms of women being blamed for causing their own rape, or the way they were dressed for causing sexual harassment, or the poor for being poor—will be imposed again on injured workers, that they are blamed for their accident, blamed for their disability and they must pay. That is unacceptable.

I encourage you to read our brief in its entirety and we would be happy to respond to any questions you might have, either on what is in the brief or on our presentation.

Mr. Dietsch: I was intrigued by your comments with respect to regulations, that you feel regulations per se will be developed by the board and the board will have the ultimate "discretion"—that is the word you have used, and I do not want to take any of your interpretation out of context—that the board would have too much discretionary power in the handling of its regulations.

Recognizing that for a long period of time the board has had some discretionary powers which we have disputed considerably over the past few weeks, what alternative body—recognizing that the board was put into place to administer the act—do you feel should make the regulations that would be satisfactory to you?

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Mr. Cwitco: I cannot answer that question without explaining that we think that the fundamental structure of the board itself, the corporate board, is wrong. If there were fundamental differences in the way the corporate board was structured; if the corporate board was truly representative of the community that it was supposed to serve, then we would not have a problem. But we do not have a corporate board that is representative and we do have a board that has shown itself to be abusive in terms of its interpretations.

In files that I have handled before the board on the issue of chronic

stress, just as one example, I have received files that say, "We don't pay that." It does not have any basis in legislation. They have simply said, "We don't pay." That is the line in the file.

That is the same group of people who are going to be advising the corporate board which is going to then be making recommendations to the cabinet, and because of that lack of responsibility I cannot tell you a different group that would be better to do it. But given that the board is what it is today; given the history of what we have seen the board do over all of the years that it has been in operation—at least the 15 years that I have been dealing with them—they have never made, in my judgement, very much link between what the law says and what they want to do. They do what they want to do and then if the law supports them, so much the better. If it does not, they ignore it.

Mr. Dietsch: So you feel that you do not have an answer for "who should be the body that would develop regulations?" but at the same time you feel that there are some inherent difficulties within the context and makeup of the board itself.

Who do you think is on the board? My understanding was that there were representatives of labour, representatives of employers' groups, representatives of injured workers, and that the board went through a considerable redevelopment a couple of years ago with Bill 101. Is it because there has not been a great deal of time in order to make those modifications? What do you feel should be the makeup of the board?

Mr. Cwitco: I think the board should be a board that represents the interests of injured workers. I think the system is a system that belongs to workers. It does not belong to employers. It belongs to workers. It is there to serve workers. It is not part of a social security system. It is part of a historic bargain that we as workers struck with the employers and the government back in 1915. We gave up something in order to have that. We gave up the right to sue. In return, we would get what was supposed to be a no-fault system that would guarantee us easy access to benefits, both for short-term and long-term disabilities.

What we got instead was an employer's insurance system that works in the interest of employers and over which employers have a tremendous amount of influence. I do not want to be rude, but from my perspective the employers in the compensation system are little more than bean counters. It is their responsibility to send money to the board based on what their assessment is. Other than that, they do not have any role in the system.

Mr. Dietsch: So the employers should not be on the board?

Mr. Cwitco: I would not think so.

Mr. Dietsch: So the board should be made up of all labour people then? Is that your view?

Mr. Cwitco: No, the board should be representative of the community that it is supposed to serve. It should be representative of the community that is there to take need of its services. So that would include workers. It would include political appointees. It would include trade unions. It would include injured workers. But it is not there to serve employers. Employers, for the most part, do not get injured. Maybe if they did, we would have fewer injuries at work, but they do not. They have relatively good conditions in the

offices that they work in and a fair amount of control over the exposures they have, and they do not get injured.

But those are not the things that are really before us in Bill 162. That is why it is difficult for me to answer your first question, Mr. Dietsch.

Mr. Dietsch: That is why I was trying to get an understanding from you as to how you felt these regulations should come into play, and that is when you led into the board makeup. You find fault with the board makeup. I understood, and I think quite clearly, that you do not feel employers should be part of the board, even though they contribute to the bill.

Miss Martel: Just continuing a little bit on from that, you talked about problems that are going to be inherent, that if the board does not like decisions coming out of the Workers' Compensation Appeals Tribunal, it can regulate those decisions.

Let me move away from regulations a little bit and just look at the policy mandate of the board, which is a little bit different. We have already seen that the policy mandate of the board in fact allowed it to change the supplements policy in November, which represented a cutback to injured workers, and there was no word from the Ministry of Labour on that when it occurred. Even if we did not talk about regulations, it is my opinion that the board could use policy and its policy mandate to do whatever it wanted anyway, so that even if we could stop parts of this bill, the board is well on its way to implementing great sections of what we see in this bill already.

Mr. Cwitco: That is why we made one of the recommendations we did in the early part of our brief. The whole process that led up to this particular piece of legislation was wrong because there was no consultation. This committee is going through a form of consultation now. There was no consultation.

The minister has proposed, as part of this package, consultation for a green paper on workers' compensation. We think the bill should be withdrawn. We think the consultation should take place. We think there should be a piece of legislation that looks at what the real problems are in the compensation system, because as sure as we are all sitting here, there are real problems in the compensation system that need to be addressed. Work those things out, find solutions to those problems and then introduce legislation that will deal with those problems.

You are right. The policy-making powers of the board have been used historically, and not just in subsection 45(5), in a whole series of sections throughout where they simply make policy. The policy manuals are 100 times the size of the act.

If anyone ever went to the act to find out what his rights were on compensation, he would surely be disappointed. He would not find out what his rights were because he has to go to the policy manuals, and even the policy manuals today are so badly out of date because the board has stopped sending us the amendments to the policy manuals. Occasionally we get a document from the board and it says, "Respond within three weeks to this."

Clearly, giving an even greater power of discretion to the board through the power to regulate, which this bill does, gives it not simply the power to make policy that it has had all along and that it has misused, but it has the power now to write those policies into law. While we could previously appeal

the policy it made to WCAT, and of course have it section 86n'd by the board, at least there was a vehicle. Now, if we win on the interpretation of policy at WCAT, the board will be able to write a regulation to write the policy into the regulation and eliminate any further appeal. We will not have to worry about section 86n any more because they will regulate it.

Mr. Carrothers: I wonder if I could just come back to what I think I heard you saying in the comments about the direction in which this bill is attempting to move the compensation system. You gave us an example of someone who got a permanent pension and was able to return and earn the salary she earned before.

My experience has been that often that is not what happens, and my experience has also been, from what I have seen of the system, that the permanent pension very often does not compensate the person who has been injured, who now has a permanent injury and who has found some other employment; that pension does not make up the gap.

It seemed to me there was an attempt here to separate out what that pension was trying to do. In other words, there is a piece of compensation for the pain and suffering, which we all agree none of us would want to share, but we want to do something to give compensation for that. Then there are the financial aspects. It is trying to deal with each separately. In other words, particularly on the financial side, try to take a measure of what the loss of income might be and give an individual payment for that as a direction that improved the situation for workers.

I thought I heard you say that was not the way, that we should stay with the simple, single, permanent pensions, which are meant to cover both of them mixed in together, but which in my experience were not doing the job. Maybe I have heard the wrong thing from you.

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Mr. Cwitco: What I was trying to say was that one of the reasons we have understood the minister to be so adamant at doing away with the permanent pension—we do not support the meat chart and have never supported the meat chart—is that this dual award system will do away with the meat chart. We do not believe that is the case.

The first one, the noneconomic loss payment, is going to be based on an analysis of the degree of impairment, so we are going to be at a meat chart anyway for the noneconomic loss. The second part is going to be in the deeming aspect of the bill, where the board will consider how much it thinks the injured worker is capable of earning.

I admit freely in the brief we have presented to you that the trade union movement was part of the recommendation to go for deeming in Saskatchewan eight years ago. I also say without equivocation that we have learned our lesson. Eight years of experience with the Saskatchewan legislation has told us we made a mistake. What we have is workers being compensated not on real wages but on perceived possible wages. We have the same thing in subsection 45(5). We have had all kinds of workers deemed to be things they are not and could not be. They take one course and they are deemed to have a job.

If the intent is to more fairly compensate injured workers, the experience of similar systems has shown us that it does not work. If you look

at the review commission that looked at the Saskatchewan legislation, it said it did not work.

Mr. Carrothers: There has been that review in Saskatchewan and my understanding is they have modified it, but kept that system. They do not appear to have concluded it was worth scrapping. They appear to have improved it and made it more specific, to get rid of the capriciousness that appeared to be in their system.

Mr. Cwitco: I stand to be corrected but it is my understanding that unions and injured workers' groups in Saskatchewan are virtually unanimous in opposing the wage-loss compensation system.

Mr. Carrothers: Was that the position in Quebec, which went this way two or three years ago and presumably was also drawing from that experience?

Mr. Cwitco: I just returned from Quebec last night and while I was there I had an opportunity to have a long conversation with the representative in our union who deals with the compensation system. I will translate literally what she said. She said we would be damn fools if we went the way Quebec went.

Mr. Carrothers: So what you are saying is that the permanent pension system is the best way to deal with this.

Mr. Cwitco: What I am saying is that there are problems with the permanent pension system, but we do not resolve the problems of the permanent pension system and the workers who are undercompensated in permanent pensions by taking money away from people with permanent pensions in the attempt, misguidedly in my judgement, to provide wage-loss compensation based on deeming.

Mr. Carrothers: The result of this legislation is money taken away from someone with a permanent pension?

Mr. Cwitco: Anyone who is injured after the date the legislation has will not get a permanent pension.

Mr. Carrothers: So the person's pension changes, but nothing is taken away from any pension that is existing.

Mr. Cwitco: No; that is right.

Mr. Carrothers: Let's not be too liberal with our phrases here.

Mr. Cwitco: I rarely have been accused of being too liberal.

Mr. Wiseman: For clarification, I would like to go back to what Mr. Dietsch has asked you. I was a little disturbed by the answer you gave that all the employer should do, if I can phrase in my own words what you have said, is put up the dough, but he should not have anything to say. I just cannot buy that. If we are going to have a bill here that works, we have to have the employer pretty happy with it and we have to have the injured workers pretty happy with it, but you mentioned that the board members should be made up of the injured workers and members of the local, and the employer should be out to lunch on it.

Any time I ever pay part of the bill, I want to have part of the say. I

want to be fair, but by golly I want my say. If that is what you are saying, I could not support anything like that at all because the people who pay for it have to have some say, just like the people who send us here. They have a say in what we are supposed to be saying around here. We are supposed to be representing them because in a way they have put their vote for us. As an employer, and one who I hope is fair, I surely could not buy that statement.

Mr. Cwitco: Let me try to convince you. I know I have an uphill battle but let me try to convince you.

First off, I do not think it is employers' money that they pay. I think it is workers' money and let me explain why I think it is workers' money. It is deferred wages. It is deferred wages that all workers give up today so that when their co-workers are injured, there will be income security for them in much the same way that we give up deferred wages when we pay into a pension plan.

Mr. Wiseman: The employer pays the whole amount, though.

Mr. Cwitco: But the employer knows what the compensation cost is going to be. When we sit down to bargain a collective agreement, the employer knows what the total compensation package is. If the employers are paying one per cent or 1.3 per cent or 1.5 per cent or two per cent of payroll for their compensation premiums, they know that. They know that money is there and that this money must be assigned to their cost of payroll.

It is a tax they know they have to pay. But that money is not there for us in wages. It is not there for us in other benefits. It is money that is our money that is being paid on our behalf.

Mr. Wiseman: Could I just ask you, if you were paying that in and you were an employer, would you not want to have representation on that board to make sure it was spent fairly and that you were not being crucified down the road for paying more than you should, and just to make sure that it is spent properly? I think the employer—sorry, I do not want to hold it up; you could talk until the cows come home but you could not convince me that employers should not have a say on the board.

Mr. Cwitco: I did not think I would convince you.

Mr. Laughren: The cows have just come home. Sorry; we are out time. Thank you very much Mr. Cwitco and Mr. Pattinson for your presentation.

The clerk has distributed to the members of the committee the statement of the minister on his proposed changes to Bill 162.

The next presentation is from the United Steelworkers of America, Local 9176. Is Mr. Dockstader here? Do you have your deemed assistant with you?

Mr. Dockstader: Yes, I sure do. I think everyone knows Bernie Young of Local 6500.

Mr. Dietsch: Who is he?

Mr. Young: Do not ask me any questions, Peter—I mean Mike.

UNITED STEELWORKERS OF AMERICA, LOCAL 9176

Mr. Dockstader: First of all, I would like to thank the standing committee for giving me the opportunity to represent this brief as representative of Local 9176 of the United Steelworkers of America.

I have been vice-president of Local 9176 for about two terms now and I am in my second year of my second term. Also, at our last negotiations, we were able to negotiate with the company a health and safety representative at each of our locations throughout Canada. I was fortunate enough to be chosen to represent the members of my local in this capacity. After becoming health and safety representative, I have worked very hard on helping members with their Workers' Compensation Board claims.

As we have a membership that is now over 200 strong, I have been involved in a number of WCB claims. Our plant is fairly new. We have been at this location for about five years. I have basically been taking care of all the WCB claims from the beginning of this plant's existence.

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After we heard that the changes to the Workers' Compensation Act were coming, we hoped they would be good and would make the system fairer and more equitable for injured workers. But after having the chance to review Bill 162, it soon became evident that if this bill did come into effect, it would do nothing for workers who have been injured already and would make it harder for future injured workers to receive the proper benefits they are entitled to.

There are several sections of Bill 162 that I have a great many problems with, but due to the lack of time available to me today, I will not address them here. The main problem in my plant, in my opinion, is the rehabilitation of workers and that is the area I would like to address with you now.

Mr. Chairman: Excuse me. What do you do at your plant?

Mr. Dockstader: I am with Continental Can. We make two-piece beverage and beer cans.

Mr. Wiseman: Recycled?

Mr. Dockstader: Aluminum. Recyclable; that is the main part.

After following closely the report of the Minna-Majesky task force, I expected the legislation would propose significant improvements in the area of rehabilitation, but I was wrong. The proposed wording of section 54a of the act is made meaningless by the fact that it is applicable only to workers who are on temporary benefits. Temporary benefits are available up to the time a permanent disability is identified. There is a maximum duration of 18 months.

This would mean that the vocational rehabilitation services, such as assessments, upgrading, retraining, job search assistance and workplace modifications, are available only for a maximum of 18 months after the accident.

If, for example, a worker is injured severely enough to be unable to engage in rehabilitation before 18 months, he or she is out of luck. If a worker is unfortunate enough to have a readily apparent permanent disability soon after the injury, thus triggering early implementation of the wage-loss

benefit, he or she is out of luck. It may even be that if a worker is lucky enough to get a program started within the 18-month time limitation, it will terminate with the expiry of the temporary benefits.

The Minna-Majesky task force recommended that any worker who sustains a serious injury or debilitating disease linked to the workplace should have a statutory right to all rehabilitation services required by him or her. The worker's access to rehabilitation and the services he or she would receive once he or she is granted access under the provisions of Bill 162 are insignificant.

Under the proposed wording of subsection 54a(5), the board will contact every worker who does not return to work within 45 days after the notice of the accident is filed. This is in order to identify the worker's need for rehabilitation. In the same section, the board is required to provide such services "if the board considers it appropriate to do so."

Bill 162 does not guarantee any rights beyond that of being contacted. Bill 162 leaves a great deal of discretion within the hands of the board. Workers are entitled to job search assistance, but Bill 162 imposes a time limit of six months with a possible extension for a total of one year. Under the existing legislation, there is no statutory time limit imposed for this assistance.

In my plant, we have workers who range from their twenties up to their late fifties in age, and because of the type of work we do, we have occasional back injuries. There have been many times where I have had to get involved by contacting the WCB in order to help these individuals obtain their benefits. These could be monetary in nature or sometimes, in some cases, physical help in the form of rehabilitation.

For example, there are workers in my plant who are in their mid-40s who are general labourers with limited education, English skills and job experience. Some of them suffer from a moderate back disability that effectively rules out work as we know it in our plant. These are the workers who rarely return to work. Bill 162 does nothing for them. The employer and the WCB have no obligation to arrange light duty or modified work for these injured workers. There also is nothing in the bill that forces the employer to retrain the worker.

In closing, I feel quite strongly about the problems with rehabilitation of injured workers under Bill 162. I think the Minister of Labour is making a big mistake in letting statutory rights of an injured worker ride on a decision made by one or a few individuals at the board. I cannot believe that the minister can leave such discretionary power to the board. Such powers of discretion allow the board to completely control the future lives of injured workers.

Bill 162 as a whole fails to address the needs of the injured workers. It introduces change that will only cause more troubles for injured workers. Bill 162 will just add more complications and create more questions for injured workers.

Rehabilitation provisions should not only provide the physical aspect, but should also assure meaningful modified work with the former employer or in another line of work where work cannot be found with the former employer. There should be some sort of educational upgrading given, if required, to employ the individual in a new occupation.

I believe the injured workers have a right to live a life with respect and dignity. Bill 162 will not give that to injured workers.

It is my opinion, and fully supported by the members of my local, that Bill 162 should be withdrawn. It is not acceptable that this government use its majority to railroad inferior legislation through the House and force thousands upon thousands of future injured workers to live with the implications of severely reduced benefit levels as compared to current legislation, which, by the way, is not adequate in or of itself.

A full and open process of consultation should take place with the involvement by all the major interested parties. This should follow along the lines of consultation that took place for the recent workplace hazardous materials information system legislation. Only then will changes be proposed that truly reflect the needs and concerns of injured workers.

Thank you.

Mr. Chairman: Thank you, Mr. Dockstader. Mrs. Sullivan had a question.

Mrs. Sullivan: Yes, thank you. Actually, I am going to put you on the spot so that you can clear up confusion for me, or at least I hope you will be able to clear it up.

You are not the first witness to talk about the 18 months relating to vocational rehabilitation services and the benefits that are available. First of all, I am going to ask you other questions after you talk about the time lines, can you walk through the time lines in terms of your analysis?

My understanding of the intent of the bill is, first of all, that vocational rehabilitation does not have to wait until maximum medical recovery; and second, that the supplement would be payable even after the final review when the rehabilitation has started before the final review. If you can just walk through the time lines that bring you to the 18 months, I think I would find that very useful.

Mr. Dockstader: All I can say on that is the point that my information is based on what has been passed on to me by the district office, or through Leo Gerard to the steelworkers, and my information is as of that. I am not in disagreement with what you are saying, but I am not aware of what you have told me right now. Okay? All the documentation I have seen has been leading to the time limits that have been put into Bill 162.

I do not think I am answering your question, but my information is what I have told you today and I cannot answer any further on that. I know what you are after, but I really cannot explain where that—my information is where I got my information from.

Mrs. Sullivan: Okay. I just—

Mr. Young: Maybe I can be of some help.

Mrs. Sullivan: Thank you.

Mr. Young: If you would not mind rephrasing the question.

Miss Martel: Do you want a copy of the bill?

Mr. Young: Yes. Would you do that?

Mr. Chairman: I think he wants the question put again, Mrs. Sullivan.

Mrs. Sullivan: I am not sure I can.

Mr. Young: I just wanted to see if you remembered it, that is all.

Mrs. Sullivan: What I was hoping would be that you could review your time lines that would place the total duration of benefit availability for vocational rehabilitation at 18 months. These are covered, of course, under two particular sections, and there is referral back and forth, but there may be some improvements that have to be made in this area, and I think it is important that we understand the reasoning that took you to that 18-month time line.

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Mr. Dockstader: I guess you have the philosophy that once the individual injured worker is in fact assessed and there is a pension given, you are assuming that benefits will continue beyond that.

Mrs. Sullivan: The supplement for rehabilitation? If they have started the rehabilitation, it would definitely continue.

Mr. Dockstader: I do not know where you are reading that, because I do not read it that way, and it is not the board's philosophy or its policy as it stands today. As it stands today, under a similar section, we have people who are involved in vocational rehabilitation programs and, come April, they will not qualify for supplements even though the program is not finished.

You are assuming that once an individual injured worker is involved in a vocational rehabilitation program, even though it goes beyond the 18 months, benefits will continue. That is not necessarily true. We can see the board still using the deeming process. There is nothing that says the board cannot deem you capable of doing something even though you are involved in a vocational rehabilitation program.

Mrs. Sullivan: That certainly was not my understanding of the intent and I really wanted to follow this up. If you can provide any other information to the committee on that point, it might be useful to all of us, particularly in terms of the time lines.

Mr. McGuigan: I have a question on a similar line. I do not know how I can get an answer. On page 2, in the middle: "...thus triggering early implementation of the wage-loss benefit, he or she is out of luck." I would not argue about whether 18 months is the right time period; maybe it is 12 months, maybe it is 24 or 36. I would not argue the time period.

But you sort of assume that when the 18 months is finished, workers' compensation washes its hands of that person. I am assuming that if a person was injured that badly, we are probably dealing with a pretty bad case. It could end up at the far end of the spectrum, at total disability, in which case the person gets a 90 per cent wage continuation.

Mr. Young: I can only speak from experience, Jim, with regard to what has happened in the past and I assume is going to happen in the future, because I do not see anything in Bill 162 that is going to change it. As long

as you have a body of people that can determine you are capable of doing some type of work, those things are going to happen; people are going to be without benefits. There is nothing in the bill that stops or prevents them from doing that.

I have worked with compensation for steelworkers for the last 11 years. I represent about 18,000 workers in one area, and I do not know of anybody—except for the one individual who passed away last September—the board thought to be totally and permanently disabled. I had one person out of 18,000. Most of our pensions run around 10 or 15 per cent; if you are lucky, it is 20. Those people will be deemed capable of doing some other types of work. If you can use those wages to apply to formula, you know what is going to happen; you are not going to receive any moneys.

Mr. McGuigan: Just a comment: I guess I cannot blame you for basing your thoughts on what has happened in the past, but I would hope you would recognize that there are major changes in these amendments.

Mr. Young: But not in that area. In that particular area the board still has the right to determine and to deem you qualified and capable of doing certain types of work and they use those wages that are phantom wages. There is no real change. It is still there.

Mr. McGuigan: I guess we will not resolve that one.

Miss Martel: Just a question to Mr. Young about the new rehabilitation policy that went into effect at the board on January 1, 1989. I know we have been dealing with it in our office and we were advised that there were several time lines included in the new policy even though the bill is not in place. In fact, what we were told and what has happened is that workers who were anticipating going to school were told that the time that they would receive rehabilitation was dependent on the length of time they received benefits. If they were on a pension supplement, the maximum there was 18 months. I do not know if you want to add anything to the policy because your people are being hit with it the same as mine.

Mr. Young: Yes, it is no different. They have all been told that. It is unfortunate, but we have people in programs today who will not be able to continue. Most of the programs run out in April. Most of those people are in upgrading at the present time because we have older workers in our particular industry. Come April, those people will not qualify for benefits. I do not know what we are going to do.

Mr. Dietsch: Could you just explain it to me a bit further? I am not sure I understand why you feel they will not qualify for benefits—

Mr. Young: Okay. If I may—

Mr. Dietsch: Could you just run it by me one more time?

Mr. Young: I cannot understand how somebody on this committee can actually ask that question over and over again. The board has the right to deem you capable of doing something, a specific job. It can use those wages to apply it to the formula, the pre-accident, the post-accident; that is how it can suspend your benefits: because you do not qualify. There is nothing in Bill 162 that is going to change that. You keep asking those same questions. As long as the board can deem you capable of earning X number of dollars and use that against you to suspend your benefits, we will have people out there

who are on rehabilitation programs who will not qualify for benefits.

Mr. Dietsch: Then you take into consideration the area of the bill that addresses suitable and available employment and spells out those areas? You feel that, even with regard to those six or seven points in addressing the suitable and available employment, and with the regulations that the board and the Lieutenant Governor in Council will put into being, the deeming process will not address that?

I understand the point you are making and clearly understand it. What would you put in place of those areas that you put forward? What process do you use, then, in that regard? What is your suggestion? That is really what I am getting at and what I would like to know.

Mr. Young: First of all, who in fact deems what is suitable? Who deems that? It is not the injured worker. It will be a body that, as I see it, is the compensation board, that is not a key player. When we talk about key players in the system and the people that Meredith spoke of, those were the injured workers. Yet we have what is supposed to be an outside body with a chairperson who is supposed to be unbiased making rules and regulations about injured workers and what is available or what will be available and what will be suitable. Let us make those decisions. If you let us make those decisions, then you will not have deeming.

Mr. Dietsch: The injured worker should make those decisions, is that what you mean by "us"?

Mr. Young: Yes, exactly. We are the people who represent injured workers.

I am not opposed to having employers sit on a board to discuss what is going to happen, but I say that when we have people sitting on a board, it should be not only those people who are interested but the players: the people who represent injured workers and injured workers themselves. Yes, there has to be something from employers. We are not opposed to that, but we want an equal say. We do not want to have our people sitting on a board. You talk about the makeup of that corporate board. I know what the makeup is, and believe me, the injured workers of this province do not have control of that corporate board. Far from it. It is much like sitting on this committee and being an NDPer.

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Mr. Chairman: Mr. Young, Mr. Dockstader, thank you for your presentation. I have never been compared to a corporate board member before, but there you go.

Mr. Dietsch: It is new to me too.

Mr. Chairman: The next presentation is from the Orillia/Muskoka District Labour Council. I think Mr. Waters is here.

Mrs. Marland: I see we are half an hour ahead of time.

Mr. Chairman: Do not get carried away. It is a long time between now and seven.

Mr. Waters, welcome to the committee. We have your brief. It has been distributed.

ORILLIA/MUSKOKA DISTRICT LABOUR COUNCIL

Mr. Waters: Thank you for hearing me. Before I get into my actual brief, I would like to make you aware that this is something that the labour movement and the people who work in the area I represent feel so passionately about that they sent someone down to talk on it. This is the first time that this group of people, labour throughout central Ontario, to my knowledge, has ever submitted any brief. That is how great the concern is. I was sort of hoping to see Mr. Black, who is my MPP, here today.

Mr. Chairman: To be fair, he is not a member of the committee.

Mr. Waters: Okay. One of the lists that I received had him on it. Anyway, I would like to go through the brief.

I am here today as president of the Orillia/Muskoka District Labour Council, representing the workers in the area from just north of Barrie through to the Parry Sound border, in the east to Highway 35 and in the west to Highway 69. I represent both the private sector workers and the public sector workers in my capacity as president of the Orillia labour council.

These workers, as well as all workers in the province, have been looking forward to some review of the present form of compensation in hopes of reforms that would better serve those most affected by the Workers' Compensation Act, those being the injured workers themselves. I see in these proposed amendments nothing for the injured worker to look forward to. The only group that has anything to cheer about in these amendments should be the employers, because it means less for the injured worker and it also means cheaper compensation rates. It looks like nothing more than a means to cut the rates at the expense of the injured worker.

I wish to thank the committee for the privilege of being allowed to present this brief. There is such limited access to the committee that many concerned groups and individuals were not allowed their right to make their presentations. It also appears that the government has allowed the process of these open meetings only as an afterthought and to give lipservice to the group of constituents most affected by the passage of this bill, the workers of Ontario. I believe that the proposed changes are nothing more than a means for the employers to cut compensation costs.

I thought that during the last election the Liberal Party of Ontario was opposed to free trade and the level playing field, which appeared to be a means of getting us down to the right-to-work states and the compensation benefits that they would receive there and in Mexico, nothing more. It no longer appears that way, as with this bill you are attacking the workers of this province in an unmerciful way. You are not only going to kick them when they are down; you are going to bludgeon them to death.

Take, for example, section 19 of the bill, which allows for an injured worker to be reinstated to his or her job. It does not cover a worker with less than one year's service, a worker presently on workers' compensation, a worker in the construction industry, most workers with major injuries—because they will be out too long to qualify—workers employed in small businesses of less than 20 employees and, by its appearance, any other group that can afford to lobby the group long enough and hard enough to get it to give in.

In the area that I come from, the vast majority of the people work in small business, they work seasonally and they work in construction. These are

not people who are organized labour; these are people who have no voice to speak for them. They come to me, they talk to me and they ask, "What can we do?" They do not know how the process works.

Then, if the worker should be able to squeeze past all of these employer loopholes, he is covered by the act for only six months. At that time, it appears that the employer can turn around and just say, "You're gone." They do not seem to have a long-term thing. I could not find it in the bill. If you can, I would like to know about it.

Should the employer, by some freak accident, actually fall into the category of having to reinstate the injured employee and decide not to, he may be fined 90 per cent of the worker's net income. This appears to be nothing more than a licence fee that has to be paid in order to avoid reinstatement of an injured employee. I find that very distasteful. We were hoping for better.

The dual award system, from what I have read, is nothing more than a cruel joke. In noneconomic loss, you appear to be trying to say it does not affect an older worker to the same degree as it affects a younger worker to be injured. I can tell you this, it does not seem to matter a lot whether you are 25 or 55; if you get your hand caught in a machine and it is amputated, it is going to hurt like hell and it is going to affect you equally for the rest of your life.

Maybe what you are getting at is that you want to punish the worker who has been working in the workforce for 30 years or more, because that worker has only 10, maybe 20 years of productivity left while the younger worker might have up to 50. If that is the case, I guess it is the thanks one can expect from our MPPs for being a responsible, working taxpayer in this province. I really believe we deserve better than this.

When you look at the economic-loss side of it, once again we see that workers are not going to be treated equally or fairly by this legislation. It has more loopholes than a fish net. I do not understand why the minister seems to be insisting on discriminating against groups of workers and not treating all injured workers in a fair and just manner.

How can the board be sitting in an office in Toronto and decide what is suitable and available employment for a worker in Muskoka? They have absolutely no way of knowing what employment is available to that injured worker. If this imaginary job should actually exist, the rate of pay would be different than in our area and mostly likely it would end up being seasonal work. I, for the life of me, cannot understand how the board can decide *carte blanche* what is suitable and available employment for an individual, not knowing the individual or the area the worker lives in.

In order to get a pension supplement under the proposed act, there appears to be a major change where it depends upon participation in a "board-authorized vocational or medical rehabilitation program."

First, I do not understand what you mean by "board-authorized." Under the old act, the supplement was paid unless the worker failed to co-operate in a rehabilitation program. This is a major shift from the presumption of payment to nonpayment of supplement, and therefore fewer workers will be entitled to their benefits.

When we look at pensions there is another major change, from the current entitlement to lifetime pensions indexed to inflation to a possibility of something somewhat less, if anything at all, after age 65.

I would ask this question of the minister: Is the pain or impairment somehow going to miraculously disappear at age 65 or is it that when an injured worker finally suffers through to age 65 you just do not care any more and therefore write that person off? Once again, it would appear that the Workers' Compensation Board will be more concerned about cost-cutting for the employer than caring for the injured worker.

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Also, more or less directed to my particular area and my concern with Muskoka and small business, I have a real concern about this coming back to work because of the fact, once again I will say, we have people who work on construction, we have people who work seasonally, most of our employment is in small industry or small business and they do not fall under this. The majority of the people in central Ontario are going to be excluded from that right. Right there you are discriminating against all those people, and I have a major problem with that.

In conclusion, I would like to emphasize a couple of my feelings about Bill 162.

This bill should be scrapped; not amended but completely scrapped. It is too flawed to be altered. What workers want and desperately need is a fair and just means of compensation for injuries and industrial diseases, not something that does nothing more than provide loopholes for unscrupulous employers to get out of compensating injured workers and cutting compensation costs. That is exactly what this bill is going to do.

I would also hope that the committee is listening to the many briefs being presented around the province on behalf of injured workers and gives serious thought to our many fears and concerns about this bill. Please remember we are talking about the Worker's Compensation Act—and the key word is "workers"—not just a means of cutting costs to employers.

I thank you for allowing me to appear before you.

Mr. Lipsett: Mr. Waters, if we could turn to page 2 of your brief and the paragraph on reinstatement, in the phrase that you say are excluded "most workers with major injuries," I presume you are referring to clause 54b(3)(a), which says, "An employer is obligated under subsection 2 until the day that is the earliest of," and (a) says, "two years after the date of the injury to the worker." Is that the phrase?

Mr. Waters: Yes.

Mr. Lipsett: Two years is not adequate?

Mr. Waters: Two years is nowhere near adequate. In one of our plants we had a person go through on a conveyor belt, where they make conveyor belts; he was pulled through a press. A person could be out for five years or better before he is even available to take any training at all, let alone go back to work.

Major injuries are major injuries. When you are in a workplace and you see a person who is basically nothing but a brain and he is breathing and his heart is going but the rest of him no longer functions, you do not bounce back in six months or two years. It takes a long, long time to recover, if ever.

Mr. Lipsett: So what would be a fair time period?

Mr. Waters: I think you should have the right to a job when and if you are capable of performing work as long as you fall within the seniority lines. A person who has worked for two years in a plant should not be able to bump somebody who has worked 25 years when he comes back, but he should have the right to a job. My God, they did not get hurt intentionally.

Mr. Lipsett: Okay. In the last sentence you say that they are only covered by the act for six months. I presume there you are referring to subsection 54b(5). The way I read that says that in the first six months the employer is presumed to have not fulfilled his obligation. It sort of stresses that automatically in the first six months the employer will be presumed to have not fulfilled his obligation.

I do not see that this completely negates the employer's obligation after six months or we would not need subsection 54b(6), which says, "For the purposes of this section, the board shall determine whether the employer has met the employer's obligations under this section upon receiving an application from the aggrieved worker."

There is more than just the six months, then, is there not?

Mr. Waters: The problem with this, as you can see, is that we are two people; we have two interpretations. If you are going to set down a set of rules that people who are not in this room, who know nothing about what is going on here or know nothing about the act at this point, are going to have to live by, you are going to have to be very specific. You are going to have to have firm rules, not loopholes.

Two years, five years, 10 years down the road, someone who knows nothing about your interpretation or my interpretation could come up with a third interpretation that is totally irrelevant to this process and they could be in control. They could be sitting at the board. That is one of the biggest problems with this bill; there are all these loopholes. You have your interpretation; I have mine.

I work with the steelworkers union, of which I am president of a local. I work with the Ontario Federation of Labour and I work with the Ontario Public Service Employees Union because they are the biggest local in my area. All three of those groups have, independently, without consulting each other, brought out briefs and recommendations for us on what is going to happen, and each one of them has said the same thing. They agree with me.

Mr. Lipsett: Finally, then, could you give me your interpretation of subsection 54b(6)?

Mr. Waters: Which is?

Mr. Lipsett: "For the purposes of this section, the board shall determine whether the employer has met the employer's obligations under this section upon receiving an application from the aggrieved worker."

Mr. Waters: Yes, I would give you my interpretation. I believe that somebody who is not party to these proceedings is going to be able to, in his own mind, without consulting the people who created the law, decide whether the employer is fulfilling his obligation. That leaves a lot of latitude and it should not.

Mr. Chairman: Which section are you on, Mr. Lipsett?

Mr. Lipsett: Subsection 54b(6).

Mr. Chairman: I do not know what the drafters had in mind, but I thought that meant meeting the employer's obligations within that six-month period. That was my interpretation of that section. I cannot speak for the minister, but that is how I would read it.

Mr. Waters: Now there is another interpretation. You are just adding credence to what I am saying. That is part of the problem with the bill and that is why the bill has to be completely withdrawn and a new bill drafted. There are too many of those things in there. There are far too many. There was not proper consultation with the people who are most affected, the injured workers, when they drafted the bill.

Mrs. Sullivan: Just to follow up on that point, I think it is very clear that section 54b requiring the employer to reinstate or re-employ is a reverse-onus obligation and that following the six-month period the other labour laws and the same rights that are available to all workers would apply. In this case, the employer is assumed guilty unless he can prove his innocence and the worker is assumed to be in the right. That is a special provision of this bill. It is an additional right for the worker who is reinstated.

I do not want to dwell on that for a long time because I did want to ask you some other questions. Under section 20 of the act, we see an amendment to section 69 enabling the board, subject to the approval of the Lieutenant Governor in Council, to draft regulations "exempting classes or subclasses of employers or workers from the application of section 54b," which relates to the reinstatement of workers.

You come from an area where there are, as you have discussed, a lot of people involved in seasonal work and in tourism. One of the things that I want to pursue with you is this: Were those groups to be exempted, how would you feel? Were they not to be exempted, how could you see them being reinstated if, for instance, in a seasonal tourism operation, the operation were not functioning?

1520

Mr. Waters: In the area I come from it is rapidly becoming year round. At this point it is seasonal, but our seasons are stretching longer and longer. Therefore, there is opportunity for them to come back. Because of the fact that the seasons are becoming longer, becoming almost a continuous workplace now, they should be entitled to a job in these resort industries. There are a lot of different jobs they can do.

I know of an instance last summer where a young girl, who happens to be a friend of my daughter, was working in a little general store. She no longer has a hand from here down, because she was working with a meat grinder. She is 17 years of age. What is she going to do? It was because her employer did not take the time to impress upon this young person that you cannot clear that meat grinder with your hand when it is running; you cannot reach in, because it will grab you instead of you grabbing it.

This girl will live for the rest of her life with that much of her arm gone. Do you not think that, next summer when she needs a job, or if she was a full-time, year-round worker who had worked for that person year after year

during the season, she should be entitled to her job or a job? I think she should. That is just one example.

Mrs. Sullivan: How would you see that kind of obligation on an employer being put into effect?

Mr. Waters: Because those people employ people year after year. Some people have spent their entire working lives working for one resort or one summer establishment in the tourist industry in Muskoka. They have worked their entire lives there. If they become injured and they have worked two thirds of their lives in this place, do you not think the next season they should be hired back? Should there not be some sort of rule that just because you are in a seasonal job in a seasonal area, you are not thrown out with the garbage if you are hurt? In these resorts, it might be working on the grounds rather than serving in a dining room, but there is always something they can do.

Mr. Wiseman: Knowing an employer who has a case similar to your daughter's friend, that fellow kept that employee on all the time I was going to school—that was a long time ago—and made sure that fellow had a job when he became 21. He was young, 15 or 16, very active in sports and everything. There may be the odd bad employer, but there are a heck of a lot who do keep them on. Whether the rules are there in the book or whatever, they feel an obligation. As an employer, I know I would feel an obligation, and this fellow did. We should not tar everybody with the same brush.

What happened to your daughter's friend is unfortunate, but I hope that employer does what the employer I just mentioned did and gives that girl a summer job and perhaps even helps later on to make sure she has some other job when she comes of age and wants to go into whatever field.

Mr. Waters: Do you want to know what happened to this girl? She was down here being fitted for an artificial hand during her March break. She is not with that employer. She is very fortunate that she has a gift in skiing. She is a very brave young lady, because she is out teaching skiing at another resort. That employer has not re-employed her. Because of another gift she has, she is able to do something, but how long can she do that? Right now, she is able to teach very small children to ski, but it is very difficult to teach children or adults some of the intricate things of skiing with only one hand.

If you think that was just one employer, I can give you an example where two weeks ago an employer sent two people out into the yard, one person with a torch—this was a small manufacturing plant in Huntsville—and another person to break the propane tanks they were using out of the ice with a lift truck. Lo and behold, the lift truck punctured a tank, the whole damned thing blew up, including the truck, and you now have two injured workers.

Who is going to be responsible for these people? They do not have a union to speak for them. That is one of the things I am concerned about. I have a union to speak for me. I have a union to help educate me in what is going on, but the average worker in this province, especially in my area, does not have that. They come to me. They phone me at night and sneak messages to me because they are terrified about their jobs should they question anything that has to do with health and safety, compensation, labour laws or anything like that.

Mr. Chairman: Let's go back to the regular rotation of speakers to be fair, Mr. Wiseman.

Mr. Carrothers: I want to turn to your comments on page 4, if I could, to just explore your reactions. I guess there you are dealing with the system this bill is suggesting we use to try to get at what the financial loss might be and the question of trying to find what employment there might be and how the process is going to work.

Certainly to this point anyway, I feel that the attempt by this legislation to separate the pain and suffering damages from the financial loss is a good one and hopefully can result in a better system for the workers. It follows an analytical process that as you are probably aware is something a court follows when it awards damages. It is a long-held principle that has developed over many, many years, if not centuries. I think it has much to commend it as a way of approaching the problem; that is, look at the pain and suffering, deal with that and then look at the financial loss.

But I can agree with you that if you get someone sitting in an ivory tower somewhere making a decision, that will not work. I hope our task here is to come up with ways to tighten those provisions and come up with a process that would work.

I just want to get your reaction. Perhaps you could come up with a system where the decision maybe is taken by somebody locally or by someone who is aware of the local situation, who is charged with having to look at the local employment situation and look at jobs that exist in the locality. He takes someone and tries to say: "Okay, what could this person who is injured do? He cannot go back to his old job; we know that. Now we look at what might otherwise be available."

Obviously, in your community you are going to get a very different set of jobs a person might do than in this community that has a wider range of jobs. In other words, you look at the worker and say that he can do these types of employment that exist in his community, and his income is now below what it would be. You are trying to compensate him for his financial loss for the rest of his working life and going through that analytical process based on local conditions.

Do you not think that could work and do you not think it would result in a better situation for the workers than the present permanent pension that from my experience, I do not see is really doing anybody any good?

Mr. Waters: As far as the permanent pension aspect goes, I can give you an example. My mother injured her back. She worked for the land registry office many years ago. She did not know until a year ago that she was entitled to have anything upgraded over all these years. The present system does not work. I agree that it needs some work.

But when you say that you have a person, let's say a regional representative of the board sitting there and he shall arbitrarily decide what that worker can do and what he cannot do and what type or amount of pension he should receive, I would have a problem with that.

Mr. Carrothers: Maybe I am trying to say "not arbitrarily."

Mr. Waters: Because I do not believe one person can always make the right decision and always think of all the facts surrounding it, I think it

might work better if you had a subcommittee or board or something where there is a representative from labour, a representative from the medical end of it and maybe a representative of the board there, and they talked to the person and found out about the person.

In my area, one of the biggest things I would be afraid of is that they would say to a person, "You can no longer do this job, but you can do that," meaning that he is impaired in some way with a loss of limb or something, and he is being forced to go out in public to work where he had always worked in the back room. The reason he worked in the back room was that he could never face the public to start with. Somebody just sitting there may not know that and may not deal with that aspect of it. You are not doing any justice to that worker. You are not helping that worker by doing it. You are making it worse.

Mr. Carrothers: But if we could come up with a process that brought all that in--

Mr. Waters: If you could come up with a process.

Mr. Carrothers: I still think it is a useful way to go. You are trying to really deal with what their damages are. Maybe you have not mentioned this historic compromise that took place, but the fact is that if this were not there, that is exactly the analytical process that somebody suing somebody would go through: "I am injured. All right. What have I got in pain?" "All right, our courts limit that, but you get something." Then, "Now what is my financial loss?" They would take you through the very process that this bill comes out with in order to come to that.

Why can we not adopt it in the workers' compensation system? Having that built up over the centuries in our jurisprudence, why not adopt it, why not use it? It seems fair to me and it has much to commend it. I see our challenge here, hopefully with helpful people who make suggestions as you are making, being to come up with something that tightens it up and takes the arbitrariness out of it and gives us a better system.

Mr. Waters: Okay, but what you are doing to that section of the act is totally rewriting it. So once again, what I have said is that you should just withdraw this bill and then you should reintroduce a proper bill, taking into consideration the fact that not everybody lives in Toronto. The vast majority of the people the Workers' Compensation Board represents live in rural Ontario or small cities. They do not live in Toronto. There is a problem with this type of thing where everybody down here is in a high-rise and that is all he sees. They look out their window and where the housing stops, that is the end of their world. We find that with a lot of things, coming from my area. It just is not adequate. We have different needs and different concerns from the people in Toronto.

1530

Mr. Chairman: Mr. Waters, Mr. Dockstader, thank you very much for your presentation.

Mr. Wiseman: Just quickly, I want to put your mind at ease. On page 3, you refer to MPPs. I think I can speak for all the MPPs. To become a good MPP, you have to be genuinely interested in people. Much of what you do as a union representative, we do in our offices on a day-to-day basis, by our office staff and us when we are there. Regardless of party, I think we are all interested in getting fair laws and representing our people in a fair way.

People see through a member if he is not genuinely interested in people.

When people ask me what makes a good member, I tell them that one of the criteria, regardless of education and everything, is to be genuinely interested in people. I think you have people here today who are that way. If they are not, the people have a way of sorting that person out. Everybody takes a little shot at politicians, but I wanted to let you know that I am not here for the money; I would make more at home. I am here because I am genuinely interested in people and want to see things go through that probably make this province a little better. If we do that, I think it is well worth the sacrifice we make to be here, away from our families and everything else.

Mr. Chairman: People who do not get re-elected we call one-trippers. Thank you, gentlemen.

I believe we have someone here from the United Food and Commercial Workers International Union, Mr. Shushelski. Perhaps you would take a seat and make yourself comfortable. We are very informal in these matters.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 114P

Mr. Shushelski: I am certainly informal. You will see that my stuff is handwritten. I just have not had the time to deal with this.

Mr. Chairman: We understand. We are pleased you are here and I encourage you just to wade right in. We have half an hour to deal with your presentation.

Mr. Shushelski: I have read it over half a dozen times and timed myself. It never went over six minutes, so how can it be long with me?

Mr. Carrothers: Do you want us to make sure you keep the six minutes this time?

Mr. Shushelski: No. I am going to go a little slower. I have had a horrible day because I have just encountered probably one of the biggest problems on the Workers' Compensation Board right in my office, over a girl. She said her MPP. I hope he is not sitting here. He may be.

Mr. Chairman: Where does she live?

Mr. Shushelski: I did not get the MPP's name. Anyway it is a problem that is not addressed here because I just encountered it today, but we may come up with it in discussion.

My name is Frank Shushelski, known as Shelski for short. I am the chief steward of Local 114P, United Food and Commercial Workers International Union.

In my union business, I have received many complaints from injured workers about the present WCB system. I have some knowledge of the Workers' Compensation Act due to a labour studies course taken at Humber College on workers' compensation. I do not believe Bill 162 is an improvement on the present system for the following reasons:

1. On pensions, there would be a lump sum payment along with wage-loss provisions. There are countless ways that in circumstances like this the recipient of a lump sum pension will be penniless soon after receiving it. The

injured worker now has no money and has no job—I understand he is going to get wage loss provisions but I am using that as a point—but there is one thing the injured worker will have for the rest of his life. They will have the restrictions and all of the horror that goes with them for being re-employed by the accident employer or any other employer.

2. On the right to return to work with the accident employer, there are no guarantees that this will be a straightforward, accomplished fact of worklife. In most cases, the injured workers, with their restrictions, will not be able to claim their previous jobs under Bill 162 any more than they can now. There is no provision for the injured worker to determine if he or she can do his or her previous job. The accident employer and the Workers' Compensation Board are still in total control on what is suitable employment that may become available. I notice they use the word "may," not "shall."

3. The problem of light duty or modified work has not been addressed. At the present time, an employer can provide instant light duty work at no wage loss in order that an injured worker does not lose time off work. Under Bill 162, will this same employer now be able to do the same in order that there will be no income loss, no lost time from work and therefore no pain and suffering pension! That is not a question. You notice the exclamation mark on the brief.

4. On rehabilitation, an injured worker is subject to substantial financial loss if that worker is in a collective agreement with benefits derived from length of service. For example, a worker with about 30 years of service has an accident resulting in a permanent injury. After rehabilitation, the accident employer has no job for this worker. The worker must take a new job or lose his wage-loss income from the WCB. Consequently, the injured worker takes the new job and suffers the financial loss and other benefits from the years of service.

5. On accident-related, wage-loss income, there is no allowance for displaced workers from a previous employer who provided benefits. The new employer may not provide the same benefits as the previous one.

6. The WCB and its medical staff still have the final word on who is eligible for benefits. The appeal process, under Bill 162, is no improvement on the present system.

In closing, what we have now leaves much to be desired, but is not met by the proposed Bill 162, in my opinion.

Mr. Chairman: Thank you, Mr. Shushelski. Are there any questions from members of the committee? You have obviously made your points very well.

Mr. Shushelski: Thank you.

Mr. Chairman: We appreciate your taking the time.

Mr. Shushelski: No questions? As I say, I hope that MPP is not here because I would like to ask him one.

Mr. Chairman: Where do you live?

Mr. Shushelski: I live at Bloor and Islington, but this person with the WCB case who became a grievor an hour ago lives in York.

Mr. Chairman: Our next scheduled appearance is from Inzola Construction (1976) Limited. Is there anyone here from Inzola Construction? Is there anyone here from the Canadian Auto Workers, Local 80? Is Norah Spence here? Would you mind going early? Is that a problem? If it is a problem, we can adjourn for a while.

Mr. Crocker: We have about 10,000 irate workers coming up at 4:30.

Mr. Chairman: Welcome to the committee. If one of you would introduce yourself, we can proceed.

1540

CANADIAN AUTO WORKERS, LOCALS 80 AND 303

Mrs. Anselmi: I am Frances Anselmi from Canadian Auto Workers, Local 80, and this is Norah Spence. She handles the bulk of the compensation cases in the plant. Jimmy Crocker is here from the CAW council. You know Jimmy.

Mr. Chairman: We know Jimmy.

Mr. Crocker: I am going to change my name next week.

Mrs. Anselmi: I would like to thank the committee for the opportunity to present this brief on behalf of our members. Even on such short notice, we feel fortunate to be here. We must, however, express our concern for the many groups that applied and will be denied this all-important opportunity.

We should remind the government that the Workers' Compensation Act belongs to workers. We agreed to a historic tradeoff in 1915, and as a result would expect the government to engage in consultation prior to introducing such wide-sweeping changes. Instead, the minister, from the moment he introduced the flawed legislation, has engaged in one confrontation after the other in an attempt to ram this bill down our throats. Much pressure has been brought to bear to even get to these hearings. To further limit them is totally unacceptable.

Bill 162: Before we begin our dissection of Bill 162, let me say that we fully support the national Canadian Auto Workers brief presented by Brother Nickerson earlier in these hearings. We also agree with the brief presented by the Ontario Human Rights Commission.

Bill 162 represents a whole series of myths presented to the public as major changes to the Workers' Compensation Act that will have wide-ranging beneficial effects on workers. The minister insults our intelligence if he assumes we cannot see through his ploy.

Workers have always requested decent lifetime pensions that adequately reflect their limitations following their workplace accident. Let us examine what they get with Bill 162: (1) Small lump sums replace the existing pension system; (2) disability pensions removed at age 65; (3) deeming introduced to ensure that few, if any, workers will receive pensions for economic loss; (4) the infamous meat chart is still with us; (5) board doctors or board-appointed physicians play an even greater role; (6) workers' personal physicians will

play an even lesser role; (7) loss of pension at age 65 with no known replacement.

Workers have always requested the right to rehabilitation to aid in getting them back to useful employment. Let's examine what they get with Bill 162: (1) No guarantee of rehabilitation, the only thing they can expect is an assessment; (2) loss of seniority rights in the workplace; (3) companies have no obligation other than to offer what they feel are appropriate job opportunities; (4) those fortunate enough to get rehabilitation are restricted to numerous time limits; (5) no help whatsoever for the thousands of workers presently seeking rehabilitation assistance; (6) the valuable and expensive Majesky-Minna report has been completely ignored; (7) the few workers who get placement only get six months protection; (8) close to 50 per cent of the workers are exempt from section 54 provisions, poor as they are.

The minister appears to have saved the best for last as he makes sure that any loopholes he may have missed that would have resulted in some justice for the workers of this province have been closed. By placing the power to establish their own regulations in the hands of the same board bureaucrats who brought us the bill in the first place, he effectively nails the last nail in the coffin of the injured workers.

In closing, let me make the position of our locals very clear. Bill 162 is so fundamentally flawed that it should be withdrawn totally. The government has recently embarked on a study of the Workers' Compensation Board through the green paper. Why should we subject ourselves to the same agony twice?

We strongly suggest to the committee that it recommend that this bill be withdrawn and all compensation matters be referred to the green paper. The scope of that committee's activities should be expanded and full public consultation take place. By doing that, once and for all we can put WCB matters to rest and achieve a complete overhaul of a system that sorely needs it. Certainly this piecemeal approach is not the answer. Thank you.

Mr. Chairman: Thank you, Mrs. Anselmi. You certainly do make the position of your local very clear.

Mr. Wiseman: I just wondered about the loss of pension after 65. When we were in the north a little while ago—maybe it is an unfair question to ask you. If it is, just tell me, or maybe Jim could tell us—one company paid, I think it was, \$28 a month for every year of employment. I think it was in Sudbury that we heard about this. In your collective agreements, if you as a worker are injured and workers' compensation pays you part and then you go back to work and work at some other job or whatever, or if you do not go back—maybe I should ask it that way—does the employer continue to pay towards your pension when, say, you have 20 years in and you have 10 years to go to 65? Does it continue to pay that and would you get retired at age 65 with a full pension, or would you just get the 20 years till the time you were injured?

Mrs. Anselmi: It would depend on when you went off injured. If you are off for a length of time, say for two years, under our agreement you are terminated after a two-year period. But under the workers' compensation, I do think the benefits still continue. Is that right?

Mrs. Spence: They do continue, but if you are able at all to do any kind of work and you cannot come back in and do the work that is called for in the plant, then you are terminated once you had stopped receiving your weekly

money from compensation; so therefore you would have no pension credits.

Mr. Crocker: I think the point, Mr. Wiseman, on the loss of pension at 65, is that really a WCB pension is granted for a particular physical disability regardless of any other pensions that you may apply for. You may have registered retirement savings plans. You may have everything. This is one pension that should be tied to the disability, and of course that disability stays with you—in most cases anyway; a high percentage of them—until you die. We do not see any rationale for losing that at 65. If you have a bad shoulder or bad back at 64, just because you achieve your 65th birthday does not mean that your back automatically becomes better. If so, there are a good many people who would be praying for their 65th birthday, but that is not the case.

Mr. Wiseman: I guess what I was looking at is: We heard and we know that certain other pensions take over at 65, like old age security or the Canada pension plan, and I just was figuring out—

Mr. Crocker: But they are granted for specific reasons, that is all. You pay into the CPP and company pension plans indirectly, even if they are paid for by the company. You give up something at collective bargaining time for them, so you indirectly contribute to almost all the pensions that you get one way or the other, including OAS.

Mr. Wiseman: I just wondered if trade unions in their bargaining made that part of the agreement: that the pension contribution goes on. The way I understood it in the north, and maybe I was wrong—I think it was in Sudbury—was that it was, like I say, \$28 a month times the 30 years or whatever, and that pension came to you at 65. If you were off on compensation, I understood it to be that they continued to put that away for you for the last, say, 20 years of work. In the last 10 years you were on workers' compensation, you would retire with 30 years times the \$28, plus your Canada pension, plus your old age pension.

I was trying to justify that in my mind because I do not know just how the system could stand it if you had four pensions at that particular time in life. If you had your workers' compensation, the one from the company, the Canada pension and the old age pension, a person might have a lot. How much can the province or whatever stand?

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Mr. Crocker: It think it is fair to say, if I can just add, that for somebody who has a bad back or bad shoulder, when they retire they have that many more difficulties. Most retirees are capable of doing most things for themselves when they retire and indeed, hopefully, most of them can enjoy it. But if you have a bad back or a bad shoulder and have that for most of your years, what that portion of the pension is for is to sort of help compensate you for the many things that you may or may not be able to do around the cottage because of that disability.

Certainly, there should be other pensions that make it economically feasible for you to enjoy your retirement. But that one pension is granted to you because of all the limitations that you have on top of everybody else, because of your workplace injury.

Mr. Wiseman: Just so I am clear, in your union, if you are on workers' compensation, they will continue to pay their portion of the

contributions. Is that right?

Mrs. Spence: No. I had a lady who went on WCB. We do a lot of assembly work that is repetitious and she could not come back and do the assembly work. She was just on a small pension and her weekly benefits from the WCB were stopped. After two or three years, I think, they have terminated her.

She could have done work in the office. The WCB sent her for rehabilitation. She passed it all, but they would not give her the job in the office so now she is out. She is getting no pension credits now. This lady had 18 years with Honeywell, but she was 50 years old.

Mr. Crocker: In the Big Three agreements, they would continue to pay. If you were off on compensation for the year, you would still get a full pension credit, but that varies with collective agreements, depending on the circumstances.

Mr. Wiseman: I figured it would and that is why I said it may not be a fair question to ask.

Mrs. Spence: If you are out on sickness and accident and you go on long-term disability and you are totally unable to work, they will give you pension credits right to 65.

Mr. Wiseman: Do most have that long-term disability?

Mrs. Spence: Yes.

Mr. Wiseman: So they would pay on that?

Mrs. Spence: If you are totally unable to do any kind of work.

Mrs. Anselmi: Once you have been accepted on the long-term disability, then you apply for the Canada pension disability. Once you achieve that, then they down your LTD payments. You just do not win in any agreements at all. Where you lose on one, you pick up on the other.

Mr. McGuigan: On the first page of the brief, just to quote the bottom paragraph: "Workers have always requested decent lifetime pensions that adequately reflect their limitations following their workplace accident. Let us examine what they get with Bill 162:" He goes through the whole list.

It seems to omit those people who—maybe I can use some of your own words—jump through all the hoops. We could argue about the validity of the hoops, how big they should be, the time frames and so on. Do you not recognize that under Bill 162, there are certainly the possibilities of a lot of people getting a wage loss supplement and having a decent life, a decent living and a proper place in society? Do you not recognize that those opportunities are there?

They are not there presently because we have had presenters, even today, who were saying that very few people get a pension over 30 per cent. One gentleman said that in his experience as a worker in this field, he had only known one person, I think, out of thousands who had actually gotten a full 75 per cent pension.

In that respect, do you not think this is an improvement over what we presently have?

Mrs. Anselmi: I do not know. In our plant, including myself, I do not know of anybody who has got that big a pension.

Mr. McGuigan: That is what I am saying.

Mrs. Anselmi: I can talk about one person within our own plant right now. She cannot even go after a higher grade of job because her hands are such a mess and the company will not take the chance on using her. So her wage is down low. She is still fighting to get her pension settled from her last one and her hands are a mess again now and she is scared to go out. She is working with hands that she can hardly move. She goes out of there every night in agony, trying to use her hands.

Mr. McGuigan: But you are reinforcing my point. I agree.

Mrs. Anselmi: It would still cut in with her pensions. If you say that when you reach age 65 a small little pension is adequate, how do you compensate that when you cannot use your hands? It just does not make sense. Granted, that little bit of money is good for what we can get, but it still does not compensate for the loss of your hands.

Mr. Crocker: If the regulations prove to be much better than we anticipate, that is great. But the only thing that we see that a worker is guaranteed is the lump sum portion, which is much smaller than what a worker who is assessed at 10 or 15 per cent would get now over a lifetime, depending on his age.

The wage loss portion is really hard for us to comment on. The way we see it, the same bureaucrats who are doing the subsection 45(5) deeming now are going to be making the same regulations for the wage loss; so we really do not see where many workers are going to qualify for anything. If they do, it will be very small.

So really when we compare monetarily what a worker would be eligible for today if he were receiving a 10 per cent pension and what he is assured of receiving under Bill 162, there really is not any comparison. Certainly, even if he is deemed 100 per cent disabled, a 25-year-old would only get \$65,000. Spread that out over a lifetime. I would rather take the 10 per cent pension at 25 years of age. Certainly monetarily, it is going to be much more beneficial to me. I guess that is what we are saying.

Mr. Carrothers: If I could jump in there: That person is also going to get the wage loss if he cannot work.

Mr. Crocker: There is no guarantee of that under this bill.

Mr. Carrothers: All right.

Mr. Crocker: There is no guarantee.

Mr. Carrothers: We have to make an assumption that those regulations can get crafted properly, and then, as it is intended, that is what happens.

Mr. Crocker: You have much more faith in those people than I do then.

Mr. Carrothers: I like to think you can make things better if you try hard enough.

So you have got that inadequate pension. The person who is in the plant has not got the money she needs, but this structure, this process, would permit something to be done for pain, and then you look at the financial loss. I would also add that there is a provision in this, for the first time, to develop a pension replacement. And all three of those things will come into play on the person you are mentioning, so she would have—

Mrs. Anselmi: But under this it does not seem to pan out that way.

Mr. Carrothers: It does. We could go through this thing word by word. I will concede that there are regulations yet to come and I can concede that there is some skepticism here that the board can work it. I hear that. That is what we hope we can do on this committee is come up with suggestions as to make sure the board does it. But then, when you do that and the way the thing works, you end up putting people in a position that is better than they have now. This pension that you are talking about that would be 15, 20 or 30 per cent: They would be given something far better.

Mr. Crocker: I think we have presented a number of examples to the committee. The committee has not really analysed or done any of those examples either. I know there were some briefs presented a week ago or so—I believe some of them were up north—that broke down the case of a person receiving a 15 or 20 per cent pension for his back under the present system and under the proposed system, and certainly if we are taking a look at strict economics the person would do much better under the present system.

Mr. Carrothers: We have also seen examples presented before us where workers would get more out of this than that. So I am sure that cases are going to differ across the board. That is for us to assimilate.

Mr. Crocker: I have not seen any where they do better personally, but I may not have been here.

Mr. Carrothers: There were several in some of the presentations that I saw, in the appendices. I think the Employers' Council on Workers' Compensation had some. Obviously, everybody is putting the cases forward that make his particular point.

Mr. Crocker: Sure.

Mr. Carrothers: And I think that you can construct cases that are better and cases that are worse. But the point is that the analysis this takes forward—and I saw you were in the room earlier when I said it—is that if you take away workers' compensation and you sue for damages for injury, the process this bill takes you through is the precise process the court would go through.

That is why I think it has much to commend it. I would like to make it work. I do not want to throw it out because I think that analytical process was developed over many years. I think it is a fair way to attempt to compensate someone. I think it is high time we put it into this bill and make it work in workers' compensation.

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Mr. Crocker: It is a shame that it is not clarified in the bill. Then we could probably analyse it a lot better, obviously.

Mr. Carrothers: Maybe so.

Mr. Dietsch: First of all, let me commend your group for the brevity of your presentation and the point form in addressing your concerns. I might say that the CAW has—Mr. Crocker has been a witness several times, in fact, three times before the committee today—been very thorough in the analysis of Bill 162 on behalf of the CAW union. I appreciate that very much.

The other comment I want to make before I ask you the question is in relationship to the concerns of those individuals who will not have an opportunity to make a verbal presentation before the committee. They always have that opportunity for that written submission, of which many members of this committee have already indicated a seriousness in taking into consideration. .

I am concerned with your point 2 under rehabilitation with respect to the loss of seniority rights in the workplace. I come out of a labour setting and worked in a factory for 24 years. I understand perfectly well the seniority aspect of the labour movement—rightfully so. I would like you to point out to me the area where you feel there is going to be a loss of seniority rights in the workplace, as you outline in that point 2.

Mrs. Spence: We are concerned about the person who comes back into the plant with little seniority and takes out someone there that is in the plant.

Mr. Dietsch: You mean an injured worker coming back?

Mrs. Spence: Coming back in, yes.

Mr. Dietsch: An injured worker coming back into the plant and bumping out a senior person?

Mrs. Spence: Yes.

Mr. Dietsch: Is that what you feel the bill will do?

Mrs. Spence: Yes.

Mr. Dietsch: What area of the bill do you feel will do that?

Mr. Crocker: Section 54b. How else are workers going to be placed? I mean, the best jobs and the easiest jobs are always the ones taken by the senior employees. Those are the best places to place injured workers, obviously. The bill just says that injured workers have to be placed or injured workers should be placed in the plant, so there is really no other way to do it, except to put them on the jobs that are relatively easier that are already filled with senior employees.

Mr. Dietsch: How should that be addressed, then? What about injured workers who have experienced that traumatic experience whom we want to get rehabilitated to come back into the job?

Mr. Crocker: We have to have enforced job modification—have employers modify the job so that workers can probably go back to their own jobs. We have been fairly successful in doing that, but I think it is time we put some meat into it and forced employers to do it instead of just saying: "There are other ways. We will either just force these workers out on the

street or we will force them into jobs out of line with seniority that cause a lot of dissension."

Certainly, by modifying jobs and considering ergonomic standards that are becoming quite a science in today's world, they could be placed properly with little or no problem.

Mr. Dietsch: So you feel that if there is a definite area addressing the aspect of modifications in the workplace for injured workers to come back to, that will help in the point you make?

Mr. Crocker: It would probably help prevent further injuries, too. When we take the injured worker off a particular job and put him or her on another one and place another worker on that job, we are opening the second worker up to the same sort of injury, which really does not solve anything.

Mr. Dietsch: I consider that point very seriously because I agree with you wholeheartedly with respect to areas of work that can be modified that will save the injury in the first place. I think that is what we want to do more than anything. I always promoted that during my history in the labour movement, as well.

We want to prevent the injuries before they happen, but with those that happen I have heard many presentations before this committee with regard to rehabilitating and getting those injured workers back to work so they can have the meaningful and contributory types of lives that they certainly had before they were injured.

Mr. Crocker: I talked to some of the other committee members privately about an example from my own plant that I think is sort of typical of it. In our plant, we make the large cars, the Crown Victoria and the Grand Marquis, for Ford. We had a job there that consisted of the person picking up the spare tires. They are big cars, so it is 15-inch radial tire on a steel rim. I believe the weight was around 78 pounds total. A worker had to pick that up, throw it in the trunk, crawl in the trunk as the car was moving, hoist the tire up on the back packing shelf and tie it down. He had to do that every 47 seconds. Needless to say, of the workers who came in the plant, the last one in was the person who did this. Those poor workers were just lasting two days and that was the end of it.

We have an ergonomist in the plant now and she has designed a hoist that clamps on to the tire and steers it up in there hydraulically and somebody else ties it in. We have not had an injury on that job since then. Mind you, it cost a little bit of money, but overall, in savings to comp claims and that kind of stuff, I think Ford will realize a profit from that decision very quickly. In fact, they agree that they will. So it is just a matter of sitting down and actually doing something about the condition.

Mr. Carrothers: Will you be including for the people who buy the car the machine to take out the spare tire?

Mr. Crocker: Listen, it did not replace a worker. You still have to have a worker to operate that machine. We did not get rid of a worker.

Mr. Carrothers: No, I just want to know if they get it when they buy the car. I have sometimes had to put mine in.

Mr. McGuigan: Having done that once or twice, it is a hell of a job. I do not know how anybody could do it every 47 seconds.

Mr. Crocker: Every 47 seconds for 10 hours a day.

Mr. McGuigan: Does the thing really weigh 78 pounds?

Mr. Crocker: Yes, I believe it does. We had it weighed, because I had a number of comp hearings on it. Believe it or not, the adjudicators actually knocked that claim down a couple of times, saying they did not think it was the sort of thing that would cause an injury, so I had to have them weighed. I stand to be corrected on that. It may be 68 pounds, but it was a surprising amount.

Mr. McGuigan: They are darned heavy.

Mr. Crocker: The tires vary a lot too, because the Michelin radials actually weigh about 10 pounds more than some of the other manufacturers' tires. Then we have steel-aluminum wheels versus the standard wheels.

Mr. McGuigan: That really does not matter much.

Mr. Crocker: It is heavy anyway, let me tell you.

Mr. McGuigan: Does Bill 162 take away, in any form, from that need for ergonomics? We all agree we need that.

Mr. Crocker: It does not take away, but it really does not put any meat into it either. I think we should have addressed it. If we are going to address reinstatement, and one part of Bill 162 very clearly talks about reinstatement, then I really think it is high time we talked about ergonomics and job modification and that kind of stuff, because that really is a good way. I do not think we have to really force employers, though I would like to see us do that, but I think we can really put some onus on employers for a change to start correcting some of these job discrepancies in the workplace instead of just throwing workers out on the scrap heap.

Mrs. Spence: We are in the process of doing a modified program, just coming in.

Mr. McGuigan: Again, while Bill 208 does not specifically address that, it moves in that direction, and we want to get at that as soon as we can.

Mr. Crocker: We have used the ergonomics portion in the Occupational Health and Safety Act. In fact, the government ergonomists have been in our plant a number of times.

Mr. McGuigan: Mines are using them a lot.

Mr. Chairman: Mr. Crocker, Mrs. Anselmi, Mrs. Spence, thank you very much.

Mr. Crocker: Let me wish the committee a happy Easter. I am not going to be with you tomorrow. I hope you will miss me. We will see you Tuesday and Wednesday. Wear your buttons too.

Mr. Chairman: The next presentation is from Inzola Construction, and I think it is John Cutruzzola. Welcome to the committee. I hope I am pronouncing that reasonably closely.

Mr. Cutruzzola: Pretty close.

Mr. Chairman: Just make yourself comfortable and proceed whenever you are ready.

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INZOLA CONSTRUCTION (1976) LTD.

Mr. Cutruzzola: Ladies and gentlemen, good evening. First of all, I thank you for giving me the time and the opportunity to voice my opinion to this committee. I hope I have something to contribute.

I am, at present, the president of a general contracting company by the name of Inzola Construction. We employ between 15 and 25 people. We are now undertaking contracts of up to \$30 million and \$40 million. I will not give the list of my qualifications while I am here. You can read it. There is no PhD there.

Mrs. Marland: There is no PhD here either.

Mr. Dietsch: None required.

Mr. Cutruzzola: Thanks.

The concern I would like to bring before you is mainly out of my own experience, but also a great desire to contribute, if I can, to better the system we have in place now. In the past, I have been involved with the board in the capacity of a contractor since 1966. We have been at almost all levels of contracting and business. We were single-employed when we started. We have gradually grown to the size we are now.

As president of Inzola Construction, I am concerned, mainly as the direct employer of the people whom we have gotten to know over the years. In our 23 years we have had many employees and have accomplished many difficult projects in and around southern Ontario and Alberta.

Our employees, most of whom have stayed with us for some five to 10 or 12 years, have become acquainted with and, in some cases, are very much a part of our family activities. Their wellbeing is important to me and my family. Therefore, from my point of view it is very important that their families are properly protected when accidents or injuries occur and that they are properly and fairly compensated.

I want to make clear that it is not my intention to make a case against that aim and I can assure this committee that I have never met any other employer in my business who feels any differently than I do. Despite this, however, there is this terrible animosity between us and the employees. The question is, "Why?" I would like to come back to this point at a later time in this presentation. For the moment, I would like to relate to you my feelings about the Workers' Compensation Board and the proposed bill.

While, in principle, I think this bill recognized the need for changes, it would be a great mistake to miss the opportunity to take a serious look at the institution and analyse and assess what needs to be done to prevent further chaos. The board's record is a disaster, in my opinion. The statistics tell us a bad story. The board had not satisfied workers, has virtually bankrupted small companies and has run a deficit that is equal to a quarter of that of the federal government, and we all know where that stands.

I would like to tell you of some of my own experiences with the board. I will quote four cases.

Case 1: We had a case where we corresponded with the board in June 1988 about our objection to an employee's claim shortly after the claim was submitted. The claim was originally submitted by our site superintendent, as the employee told him he injured his back while working. However, we later were informed by a fellow worker that he in fact did not injure his back on the site, but on the previous weekend while moving a friend.

The WCB continued to pay benefits to this employee, even though it had received our letter of objection. We have corresponded three times in writing since our letter of June 1988 and have made several phone calls since those letters. To date, as of March 1989, nine months later, we have yet to receive acknowledgement of our letters. Nor have they investigated the situation.

We, the employer, are faced with the illegitimate claim on our record, the record of our accident statement, for the next two to three years. We will also be required to pay additional premiums based on that CAD-7 rating, all of which could possibly have been prevented had the Workers' Compensation Board acted upon our objection when it was actually submitted. The employee may not have been eligible for compensation. We feel this is an unfair way for employees to abuse the system and take away benefits that someone else may be entitled to.

Case 2: An employee was given an overpayment by the Workers' Compensation Board. WCB has corresponded with him once to indicate the overpayment and request that the employee reimburse the Workers' Compensation Board. We, the employer, were not notified of this overpayment; however, this overpayment was applied to our accident cost statement. It was not brought to our attention until we requested that the board submit to us a review of the file and give us a complete update of the status of the same.

It now appears that if we want the overpayment to be removed from our accident cost statement, we must collect from the employee. It is felt that if the Workers' Compensation Board office were to communicate with the employer more in respect to the amounts that are paid out, these errors would be eliminated.

Case 3: An employee was awarded a permanent pension. The only part of the award of the pension that we were asked to partake in was the confirmation of his wages. The Workers' Compensation Board did not contact us to inform us that this settlement was being given to the employee or allow us to participate in rehabilitation to allow this employee to come back to work.

Case 4: An employee has been given an award, a monthly temporary supplementary benefit for the next 36 months or while he is rehabilitating. We have not been given the opportunity to help this employee to come back to work, whether with reduced responsibility or to allow him the opportunity to see if he is able to perform the task that he once did.

These are four cases out of 14 that we have experienced since 1979. Most of them are minimal cases. There is more I can tell you about the experiences we had with the board. However, I would like to stop the bashing, but wonder how the Workers' Compensation Board can manage an even more complicated act under the status quo. We need a new approach. The past should serve as a lesson for us to know how to do it better in the future. My philosophy, in my own business, is move forward with a firmer foot now that we learned of a wrong step.

Yes, I do see a lot of opportunity here for real improvement for both the workers and the employers. The list is too long to try to fix it all here in a few minutes or a few hours, in isolation, without consultation with all parties involved. Too many times in our system we work that way, and I tell you the time has come where we cannot afford to keep making the same mistake. We must do better.

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That is why I propose the following:

The bill should include absolute provision whereby a review committee be set up to analyse and assess and submit the recommendations to the board, which, in turn, must implement. Further, this committee must report to the Legislature every year to bring the legislators up to date on the situation, at least for the first five years. For too long the board had no accountability or very little input from the government, its employer. I know for a fact that when a worker has a problem with his claim, the person he goes to is his member of provincial parliament. Therefore, he should be informed.

The review committee I propose is to be equally represented by voluntary representatives of both the workers and the employers. This will ensure that recommendations put before the board are being screened and approved by the same people who foot the bill and take the consequences.

To have my support, the bill should be amended, at least until the review committee suggests other ways to limit the insured ceiling for workers to no more than the total of the net earnings of any hours of work earned in his last day of work prior to the accident, multiplied by the working hours of the year. This will allow for fair compensation according to the scale of earnings of the different categories of workers, unionized, nonunionized, etc.

Providing these amendments are incorporated, I do support the bill.

I may remind you that if this amendment is implemented, the process would be simplified and would work. In business, unlike bureaucracy, we simplify things and they work. Because I trust the merit of this approach, I recommend that we stop the alienation of each group by working in isolation.

To my thinking, we are civilized people. We need this institution. We need to care for the injured. We are spending a lot of funds anyway, so let's stop the confrontational process. Let's work together and set an example for the rest of the country and the world. We can do it. We in the industry have the will to do better; let us and the workers work towards that goal. You will find over a period of time that it will bring to you a lot of positive changes, so let's have a new beginning.

Thank you for listening to me. Sorry for the number of spelling or typing mistakes there. We converted this to typing a few minutes ago and we did not have time to review it. If I can clarify anything, since my accent may make it difficult for some of you to understand, I will be glad to answer your questions.

The Acting Chairman (Mr. McGuigan): Thank you, Mr. Cutruzzola. I think you have the same kind of typewriter that I have. It makes mistakes.

Mr. Cutruzzola: That is right.

The Acting Chairman: You can always blame it on the typewriter.

Just as a matter of interest, I was intrigued by comparing us with the federal government. I guess coming from the government I do, that is kind of an unfair comparison, but—

Mr. Cutruzzola: Just the deficit, sir. I was referring just to the deficit.

The Acting Chairman: I was just going to point out that the federal deficit is about \$320 billion and workers' compensation is between \$7 billion and \$8 billion.

Mr. Cutruzzola: I was referring to the annual deficit, not the capital. You are referring to the debt; I referred to the deficit.

The Acting Chairman: Oh, I see. I think the annual deficit federally is around \$30 billion or \$32 billion.

Mrs. Marland: Mr. Cutruzzola, do not ever apologize for your accent. You obviously are at least bilingual and most of us are only unilingual.

Could you explain to me, with a company like yours, and certainly you do a tremendous volume of business with your \$30-million-plus or \$40-million-plus business, where you are using subtrades in order to fulfil your contracts, how does the Workers' Compensation Board coverage work? When you hire on subtrades, do you as the contractor pay their WCB costs or do they pay their own?

Mr. Cutruzzola: Usually, they pay their own. However, as general contractors, we have the obligation to make sure they pay their own and we request a certificate of clearance from time to time as the work proceeds to make sure they are in proper standing with the board.

Mrs. Marland: So if I am an electrician or a bricklayer or a welder and I am going after different jobs—I want to go and work on the domed stadium and I know there is a bid from a group of subtrades—can I hire on with one of those subtrades and get the job, even though it is Ellis-Don or your company that is doing the building, but in order for you to hire me on, I have to have this certificate that says I have subscribed to WCB?

Mr. Cutruzzola: Yes, and that you are in good standing.

Mrs. Marland: That is very interesting. Is it fair to say that—what?—70 per cent of construction in Ontario is done through subcontracting through subtrades?

Mr. Cutruzzola: Yes.

Mrs. Marland: Does it then follow that in Ontario the major employers in construction are not paying the WCB contribution themselves, but the subtrade worker is?

Mr. Cutruzzola: I would not agree with that. The cost of those payments is paid by the major employer, the major contractor.

Mrs. Marland: John, how is that done if the majority of their hiring on is through subcontractors?

Mr. Cutruzzola: When the contract is undertaken by the general contractor, in this case the general contractor has to allow for those expenditures of the subcontractors. Each of the subcontractors has a cost allocated to the workers' compensation cost. Each of them will have \$10,000 or \$20,000 or \$30,000. As general contractors, we are the ones that, if we come and build you a house, when we give you your cost for the house, have to include it. We are the ones who ask you to pay for the workers' compensation. We may not remit the amount to the board directly ourselves, but we are the ones who pay, or at least trigger the payment.

Mrs. Marland: It is out of your pocket in the contract price that you sign with the subtrades, but it is not directly flowed out of your pocket through the WCB because the subtrades have paid it.

Mr. Cutruzzola: It is the same as a door. If we have to put 10 doors in your house, we price 10 doors. If you require a performance bond for us to build your house, we provide for the performance bond's cost. If the cost of the house is mainly labour instead of—in many cases, it is more material because you use more luxury material than labour. Let's say if your house is made of marble, the cost of marble would overrun the cost of labour. In that case, we have to assess that and allow for lesser cost in the labour and more cost in the material. We are the ones who have to allocate.

Mrs. Marland: I understand that.

Mr. Cutruzzola: We have to provide you with the funds, in other words, for you to pay the board as a subcontractor.

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Mrs. Marland: I understand that, but this is the committee that looked into mining accidents in the province. I would guess that the general construction industry in the province has the highest accident rate and probably mining comes second. Therefore, the compensation rates have to be high, commensurate with the risk of the job. But the direct cost of that compensation, with so much subcontracting, had not occurred to me till I heard you speaking.

I know it is paid in the end by the consumer who goes in and buys a condominium, rents the apartment, rents the office space or whatever. I know who pays the cost in the end, because it is a very real cost, but it is sort of interesting to think about from the standpoint that when we are talking about where this bill works for the workers and where it does not, or where it works for the employers and where it does not, the cost is a major factor here.

Mr. Cutruzzola: My concern is what I stated at the beginning. I am not here necessarily for John Cutruzzola. That is part of it, but I am here looking at the overall industry and the experience I have had, both as an employer and as a family member of injured people. I come from a working background. I do have experience in both. I hope my presentation is interpreted in the spirit I presented it to you, and that is not so much dwelling over what went wrong—obviously, things go wrong and it is easy to look behind and say we made this or that mistake—but I hope what I achieve by

being here is to impress upon you the importance of looking at better ways of doing what we are doing to benefit all and use the funds more efficiently.

It may be that the funds we are paying are ultimately what must be paid, but I think the feeling at this point is that they are not efficiently used. The workers are not happy. We are not happy because we are paying a lot of money. I think the key is to be able to look to find ways to more efficiently distribute the funds. If that is what has to be paid, it has to be paid, but I think you will find the point here is that there is a lot of waste in the system.

Mrs. Marland: That is why your presentation is so refreshing. You have been on the other side where you have faced, as a worker, the element of risk to your person and to your family, which might suffer as a result of that. Now, as an employer, you are recognizing that if there is to be a new bill to remedy the situation that exists today in Ontario for workers' compensation and the execution of that or the administration of that—you are right; there is absolutely a lot of waste. It is not working and we agree.

Mr. Cutruzzola: By my nature, in my business, I like to work together. In my office, with my people, we work as a team. I really believe that if we are serious about putting all the parties together, not for one day and not for one hour but together with the mandate to come back and iron out what the issues are, making sure the worker is now satisfied that everything that could be done has been done for him and the employer is satisfied that the money he is paying is to a good degree well spent, then I think that if we are able to implement that avenue, it will go a long way.

A year from now, we may have had the opportunity to go over these issues and the concerns and come back to this body and say: "This is what we found. This is what the workers want. This is what the employers want." Maybe we can get this thing going and be an example for everybody else. I really believe in co-operation.

I do not think the workers out there know—first of all, hardly any worker knows that the money he is getting, as an injured person, comes from his employer. They think it comes from the government. They do not know it is actually the employers who are contributing to their payments. It is things like that.

I am not anti-union, but I think the union has a job to do, to inform and not necessarily put the employees against the employer at all times. It would be nice if we could work together not only in so far as these are concerned, but in so far as productivity on the job is concerned. I think we need to co-operate. We need to talk and find and settle our issues. There is absolutely no employer who benefits from an injured employee.

The Acting Chairman: If I can just interject, Mrs. Marland, we have passed our usual 20 minutes, but we do not have a presenter for some time, so I am in the hands of the committee.

Mrs. Marland: If you have not, I was going to ask another question.

The Acting Chairman: If you want to carry on.

Mrs. Marland: Our five o'clock one is not here? Oh, we are ahead of time. Is that what you mean?

The Acting Chairman: Actually, I was in error. We still have two or three minutes, but even beyond that, if the committee and Mr. Cutruzzola want to carry on—

Mrs. Marland: If someone else wants to speak, I will come back on.

Mr. Cutruzzola: I am here.

The Acting Chairman: The alternative is to adjourn, but whatever the committee wants to do is fine.

Mr. Dietsch: I would like to ask a question based on one of our earlier presenters today. An individual who was representing the labour movement indicated to the committee in his presentation that he felt the board's makeup, the people who administer the act—you so thoughtfully, in your presentation, put forward an understanding of both sides of the question—the board should be made up only of workers and injured workers. I would like to have your response to that type of makeup.

Mr. Cutruzzola: Yes. The response is obvious. I do not think the worker would accept it if I came here and said the board should be made up of, and the decisions should be made solely by, employers. I do not think that is representative of the workers out there. I think that would be totally unreasonable.

Mr. Dietsch: That is not unlike what I expected, but I want to ask you the reverse of that position. Do you feel very comfortable having worker representation on the board and understanding both sides of the question?

Mr. Cutruzzola: Yes.

Mr. Dietsch: Do you feel that kind of makeup is in fact mandatory?

Mr. Cutruzzola: Yes. I feel that if the workers were sitting down and listening and seeing the issues as they came up and were made aware of what the consequences of each demand or concession were, they would agree and would be talking differently, if they knew all the facts. What they know now is only what the union tells them to do or say. There is no doubt in my mind that if we worked together, if they had the opportunity to sit with the employers, you would see a different attitude. Obviously, it would be nice for the workers or for the employers to decide in their own way, but we all know that is impossible. We have to come to the table, work out a give and take approach and achieve results that way.

Mr. Dietsch: Thank you very much.

The Acting Chairman: No further questions? If not, we will recess for 20 minutes.

The committee recessed at 4:40 p.m.

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Mr. Chairman: The standing committee on resources development will reconvene and come to order. I appreciate the fact that the Employers' Advocacy Council is prepared to start a little early. We are pleased that you are here. I believe you are Mr. Cryne.

Mr. Cryne: Yes, that is correct.

Mr. Chairman: Would you introduce your colleagues? We recognize Mr. Frame sitting behind you.

Mr. Frame: Just observing.

Mr. Chairman: Right.

EMPLOYERS' ADVOCACY COUNCIL

Mr. Cryne: On my left is Mr. Wadsworth from the Toronto chapter of the Employers' Advocacy Council. On my right is Norman Vivash, who is the treasurer of the Employers' Advocacy Council. My name is Stephen Cryne.

Mr. Chairman: We are quite ready to receive your brief. As you might know, you have a half-hour and you can either use that entirely in the presentation yourself or as a mix with exchange with the members. Whenever you are ready, please proceed.

Mr. Cryne: To commence, I would like to perhaps take a moment and give you a brief overview in terms of the structure of our organization and the purpose of our organization.

The Employers' Advocacy Council is a voluntary nonprofit organization of employers dedicated to: establishing a credible collective voice for all employers by which constructive changes are made to the workers' compensation system, resulting in a more equitable and efficient system for both employers and workers in Ontario; monitoring Ontario's workers' compensation system actions, activities, policies and procedures and developing an effective intervention strategy when and where applicable.

Our broad membership presently represents approximately 600 employers, large and small, with over 50,000 employees. The council was established in 1986 and we presently have chapters throughout the province—Kitchener-Waterloo, Hamilton, Sudbury and Toronto—and we are looking at expanding.

We appreciate the opportunity to comment on the proposed Bill 162 on workers' compensation reform. A number of chapters have been before the committee in Toronto and in Sudbury and further chapters will be making submissions on specific aspects of the bill. The purpose of our presentation here today is to summarize those concerns.

In going into our presentation, I would like to begin by outlining some of our general comments. We are in general agreement with the principles underlying the proposed amendments to the Workers' Compensation Act contained in Bill 162. We fully support the minister's intention to provide fairer compensation to those workers who suffer a permanent disability as a result of a work-related injury, and we are pleased to see that the minister intends to achieve this in an equitable manner by reallocating the present resources within the system. However, our support for the bill is based on the assumption that the bill will not result in an increase to the costs of the present system.

The following information summarizes the concerns of our members throughout Ontario. For further information, I would refer you to the specific documents filed by each of our chapters.

With regard to the issue of noneconomic pension awards, the council supports the inherent fairness of providing reasonable financial compensation to workers who have suffered a permanent disability caused by a workplace accident or illness for noneconomic losses such as the future effect on their personal lifestyle and loss of enjoyment of that functional capability. To this end, the EAC supports both the formula for calculating the awards and the use of the American Medical Association guidelines in evaluating permanent impairment.

We recommend the current WCB policy with respect to stacking of pension awards be included in the legislation. As such, we have a proposal for a subsection 45(4)(b) reading:

"Total disability benefits received by a worker in recognition of the level of impairment under this section shall not exceed 100 per cent impairment in one or more than one claim, excluding any lump sum given for facial disfigurement."

We recommend that subsection 45(7)(a) should be amended by adding "and the employer" after the word "worker." This will provide employers with worker medical assessments, which will assist employers in formulating rehabilitation programs.

With regard to the issue of noneconomic pension awards, we further recommend that all sums to be paid to a worker by the WCB should be based upon the present value of the capitalized award for the year in which the sum is allocated and that those charges be immediately put back to the employer's cost statement.

We support the recent amendments to the proposed bill under subsection 45(15) in the area of access to the Workers' Compensation Appeals Tribunal for an issue in dispute and under subsection 45(4) the right of a worker having the privilege of using either WCB doctors or, in the alternative, a doctor selected from the roster of physicians.

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Further, we recommend a new clause, 45(13)(b), to permit an employer to apply for reconsideration of an award in the event of a worker's condition significantly improving.

On the issue of the 90 per cent wage loss, the EAC also supports the inherent fairness to both employers and workers in ensuring that future wage-loss benefits apply only to those workers who remain incapable of performing pre-accident work and suffer a wage loss.

To this end, the EAC recommends the words "or resulting in temporary disability for 12...months" in subsection 45a(1) be deleted.

We suggest the committee give serious consideration to the consequences that economic downturns may bring. While Ontario has prospered significantly in the last four or five years, we should remember the severity of the 1981-82 recession. Such a system should not permit workers the advantage of workers' compensation as a means of avoiding the negative impacts of a layoff resulting from such a business downturn.

We urge this committee to consider the definitions "future loss of earnings" and "suitable and available employment." Given that a 24 per cent

illiteracy rate is present in Ontario, employers are concerned that with a structural shift of skills within the economy, some workers may be permanently unemployable as a result of skills as opposed to injury. While we presently have no solution to offer in this regard, we feel the committee has an obligation to review the implications of this situation.

Turning to the vocational rehabilitation section of the bill, the EAC has an absolute commitment to more effective rehabilitation and we fully endorse the minister's proposal that injured workers receive early access to such rehabilitation and any necessary services appropriate in the circumstances.

To this end, the EAC recommends that vocational rehabilitation assessment and involvement be provided not later than 45 days of absence from the workplace and as soon as a need is identified in any particular worker's situation.

We recommend greater involvement of employers in the process. Employer involvement is the key to a worker's early return to the workplace. We believe this committee should ensure that procedures are in place to ensure that employers are involved in that process.

We recommend that the words "if the offer is accepted" be deleted from subsection 54a(6). We believe these words are redundant and unnecessary, given the provisions of section 40 of the act.

We recommend that vocational rehabilitation be mandatory for all workers who remain disabled beyond six months from the date of the accident.

With regard to the section dealing with the injured worker's right of reinstatement, the Employers' Advocacy Council supports the intent and philosophy of the sections on reinstatement and re-employment of Bill 162, but we have a number of significant concerns in that area.

There is great concern in the employer community as to why the reinstatement section is needed in Bill 162 when this issue is adequately addressed by the Ontario Human Rights Code, 1981. Subsection 46(2) of the Human Rights Code states,

"Where a provision in an act or regulation purports to require or authorize conduct that is a contravention of part I, this act applies and prevails unless the act or regulations specifically provides that it is to apply notwithstanding this act."

Unless a significant opting out amendment is considered under Bill 162, by virtue of subsection 46(2), the Human Rights Code will have primacy over the reinstatement section as proposed.

In a recent address to members of the law society in February of this year, Raj Anand of the Human Rights Commission expressed his concerns about the proposed jurisdictional overlap between the Human Rights Code and Bill 162. Mr. Anand indicated:

"Unless this overlap is addressed and resolved now, prior to the passage of the legislation, the result will be jurisdictional and administrative confusion between the role of the commission and the WCB. This will lead to frustration on the part of both injured workers and employers and an ineffective public policy."

It is interesting to note that in finalizing the guidelines for assessing accommodation requirements and undue hardship in disability cases under the code, the commission sought extensive public consultation. The Employers' Advocacy Council believes that employers, as sole funders of this system, should have input into any such regulations or guidelines, as this will not only change the workplace but could well subject employers to greater financial consequences.

The EAC therefore recommends that section 54b of Bill 162, reinstatement and re-employment, be deleted and we urge this committee to further exert any influence it may have upon the Ontario Human Rights Commission to involve the employer community in any proposed guidelines or regulations in this area.

On the subject of allocation of funds for loss of retirement income, we are concerned that this proposal to provide benefits for loss of retirement income, as it now stands, is ill-conceived, unaffordable and inherently unfair. As such, we recommend the following:

That section 45b be revised to ensure that benefits for loss of retirement income are awarded only in those cases where a loss of retirement income has been experienced. We believe this is in keeping with the true intent of the legislation;

That the proposed legislation or any fund developed in this regard be reviewed by the Pension Commission of Ontario to ensure consistency and compliance with present pension legislation and trends within Ontario; and further

That the level of funding set aside for the individual worker is equal to the actual loss of pension contributions that arise as a result of the injury.

On the matter of the earnings ceiling, the proposal under Bill 162 is to raise the eligible earnings ceiling to 175 per cent of the average industrial wage from its present position of 140 per cent. In other words, the earnings level will rise from approximately \$35,000 to \$45,000, at an estimated cost of between \$40 million and \$50 million per year. The Ministry of Labour, we understand, has estimated this cost at about \$40 million while the Mercer study has estimated it at around \$50 million.

We believe that moving the earnings ceiling upwards will have significant, negative financial impacts on many of Ontario's employers. We believe that there appears to be some understanding of this hardship by the proposed phasing in of these increases in two stages to help offset the costs to industry. We note that the Minister of Labour has publicly stated that the bill will be revenue neutral. We note that this will not be the case for all industries. We are disappointed that the government would consider such a dramatic shift in the earnings ceiling without offering any detailed background in terms of the economic impact on Ontario business.

As such, the EAC proposes the following:

First, to freeze the earnings ceiling at 140 per cent of the average industrial wage until such time as a comprehensive economic impact study on the effects of this proposal on Ontario business can be tabled;

Second, if the government is intent upon implementing these proposals without the benefit of an economic impact study, then we request that this

measure be rolled in over a three-year period as opposed to the present two. This will provide affected organizations additional time to adjust to the increased cost pressures;

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Third, the Minister of Labour should table any financial information which supports the position that Bill 162 is revenue neutral, since many actuaries have advised us that in the absence of policy regulations which will essentially govern the day-to-day administration of the act, it is virtually impossible to provide a credible evaluation. We also note that these regulations are unavailable at this point in time.

On the matter of benefits continuation: The scope of employment benefits has not, in our opinion, been adequately defined or considered under this proposal, nor has the impact upon the construction industry, where the employer is not directly responsible for payment of wages and benefits.

Further, it is noted that the proposal in its present form may require the employer to continue contributions throughout any absence in the year after the date of injury. To this end, the Employers' Advocacy Council recommends that a clear definition of employment benefits be provided to employers for further comment; that the construction industry, because of its uniqueness and seasonability, be exempted from the provision; and that subsection 5a(1) be amended by adding the following words: "provided, however, that such periods of absence by the worker result from the injury."

In closing, the Minister of Labour has stated publicly that the amendments contained in Bill 162 are revenue neutral and that Bill 162 will effectively reallocate resources within the system. This committee will appreciate that the costs of the Workers' Compensation Board system are very important to the employers in Ontario. In fact, the costs associated with providing WCB benefits exceed those of any other individual employer-paid benefit.

Our fears with regard to the issue of cost are not without foundation. For the calendar year ended 1987, employers remitted \$2.09 billion to the Workers' Compensation Board, and at December 31, 1987 the WCB had an unfunded liability of some \$6.7 billion. It is estimated that will increase by a further \$500 million for the year 1988. This liability has grown from \$518 million in 1975 to its present level of over \$7 billion.

We submit that this is not an acceptable situation, and we believe that it has ramifications for other issues in the province of Ontario. Certainly, it must be an item of consideration to the province's credit rating. We believe that a lack of consideration for the cost implications of many of the amendments which have been made to the act and to board policy have significantly impacted on the rapid increase in the unfunded liability. Employers are concerned that this proposed legislation, if not amended, will further add to the unfunded liability.

Our concern is heightened by the lack of objective costing information that has been made available to us to date. Our concern is based upon past experience with the workers' compensation system. We note that the cost of the pension disability payment system has escalated dramatically from a capitalized value of \$58 million resulting from pensions in 1975 accidents to the present capitalized value of \$650 million for pensions resulting from 1988 accidents. This is partly due to the fact that the system, we believe, is no

longer restricting payments to work-related conditions. Worthy of further note in support of that concern is the dramatic increase in the average number of days on benefit, which we have seen rise from 23.4 days in 1980 to 34 days in 1987.

When one recognizes that the average back or chronic pain claim is off work for an average of eight months, and such a worker normally receives at least a 10 per cent pension for life, you can imagine why employers are seeking justice in the workers' compensation process. While we sympathize with many workers who are disabled not as a result of their work, but rather their own physical health, we cannot continue to afford to pay for such nonwork-related problems.

For those who may suggest that such is the cost of doing business, we would like to respond that we are prepared to absorb the costs of liabilities that flow from our business dealings, but not those which should rather be carried by our services programs.

In conclusion, we feel that this committee has an obligation to fulfil. It must ensure that the amendments being considered are fair and equitable to all parties. It must ensure that the information upon which the amendments have been predicated is sound and is available to all parties, and that the costs of providing these amendments must be clearly established and communicated to the stakeholders responsible for funding. The committee also has an obligation, we believe, to ensure the costs of the amendments can be economically afforded in Ontario both today and in the future.

Thank you for providing us with the opportunity of making this presentation before the committee.

Mr. Chairman: Thank you. Just in the matter of interest, your chapter did make a presentation in Sudbury, by the way.

Mr. Cryne: That is correct.

Mr. Chairman: I wondered at the time, but did not ask, whether or not you are almost like a sister organization of the Employers' Council on Workers' Compensation or whether it is totally separate.

Mr. Cryne: We are totally divorced and separate from that organization. I guess the word "council" is somewhat confusing. The major difference between our two organizations is that we are strictly employers. Each of us has full-time employment with companies in Ontario. It was a recognition of many of the problems that we saw as practitioners in the Workers' Compensation Board system that gave root to the establishment of our organization.

Mr. Chairman: Are they not, as well, though? I thought they were.

Mr. Cryne: They are a collection of trade associations, employer associations.

Mr. Chairman: I see. And you are directly employers?

Mr. Cryne: We are directly employers. What we have tried to do is establish an executive at each chapter level.

Mr. Lipsett: In your brief, which I think is on page 8, you listed

some concerns about the possible overlap of this bill with the Human Rights Code. Earlier today we were dealing with overlap as it pertains to the collective agreement. Specifically, I refer to subsection 54b(8). I would like your comments on that section as it deals with overlapping between this bill and the collective agreement. Second, do you believe that as a result, what we have in that subsection is in the best interest of the injured worker?

Mr. Cryne: Under the amendment as is proposed?

Mr. Lipsett: Yes.

Mr. Cryne: You are wondering if that is in the best interest of the worker?

Mr. Lipsett: Of the injured worker.

Mr. Cryne: I think one of the problems that we found with that particular section of the legislation is that where agreements have been struck between individual unions and employers, this particular piece of legislation is going to supersede; it will have primacy over those collective agreements. Is that correct as it now stands?

Mr. Lipsett: The section says, "Where this section conflicts with a collective agreement that is binding upon the employer and the obligations of the employer under this section in respect of a worker afford the worker greater reinstatement or re-employment terms in the circumstances than the terms available to the worker under the collective agreement, this section prevails..."

Mr. Cryne: Mr. Wadsworth would respond to that question.

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Mr. Wadsworth: As I understand employment law in Ontario as it stands, it has well been founded that all jurisprudence, particularly the law, takes precedence over any collective agreement, not permitting the parties to subcontract out, whether it is the Human Rights Code, employment standards, workers' compensation, etc.

If this bill, for example, the Human Rights Code, as Raj Anand suggests, gives a greater benefit to all individuals, not just injured workers in construction, not in construction, across the province, I find it is going to be very difficult for either the trade union movement or select employers to then argue in front of a court of competent jurisdiction or a board of arbitration that somehow they are going to get around the legislation by means of a collective agreement. Certainly, in the experiences I have had in the labour relations forum I have not seen any successful arguments in that area.

Mr. Lipsett: I noticed on page 8 you do say you support the intent and philosophy of the sections on reinstatement and re-employment, but on page 9 I think you say you recommend it be deleted. I would like you to comment on that.

Mr. Cryne: The intent behind the philosophy of reinstatement and re-employment is good for employers and is good for injured workers in general. We do not believe it has place within the legislation. We believe it is adequately covered through the Ontario Human Rights Code.

Mrs. Sullivan: I had questions relating to vocational rehabilitation and remarks you made on page 7; in particular, the speed you recommend in relationship to the assessment and subsequent involvement in a vocational rehabilitation program. One of the things that is very difficult for both labour and management to come to terms with here is the precise time where vocational rehabilitation is most useful. In some cases, with a serious injury, it may not be possible, we are told, for people to have a useful vocational rehabilitation start until perhaps three years after the date of the injury. We have been told by union people that with less-severe injuries one of the things they have seen frequently is a reinjury caused through participation in a vocational rehabilitation program that gets them back into work too early, before the actual healing is complete.

Of course, another point of view is that the vocational rehabilitation should start as soon as possible and in concurrence with the medical rehabilitation. When you are suggesting that the assessment be provided not later than 45 days and that this be put into the legislation, I am wondering if you are taking into account the various kinds of problems that are actually faced in terms of introducing a vocational rehabilitation program.

Mr. Cryne: One of the concerns we have there is that the board does not wait until 45 days before offering vocational rehabilitation. We would like to see it implemented as soon as the need is identified within a particular worker's situation. One of the problems we see now from an employer's perspective is that vocational rehabilitation is too little, too late. We do not want to see that the 45 days become a benchmark before vocational rehabilitation is offered.

Mrs. Sullivan: In fact, then, you are really addressing two sections of the bill, because the bill now suggests, first, 45 days after injury the worker is contacted to determine his progress and so on. The assessment can occur up to six months after and the assessment is very much an integral part of the rehabilitation program. You want the assessment, then, to occur far earlier than up to six months? You see, within the six-month period it can occur at any time.

Mr. Cryne: That is correct but, again, I would like to reiterate that we do not want to see the 45 days become the benchmark before any action is taken on behalf of the board.

Mr. Wadsworth: What we are also afraid of is that we have seen circumstances where functional overlays or psychological aspects are introduced in a post-traumatic or, now we are finding, in a nontraumatic type of injury because they are distanced from the workforce. If the board's facts are true and the majority of people return to work before that assessment period, the 45 days, I do not think it is that unnecessary a cost that certainly our employers are concerned about.

Mrs. Sullivan: But most of the people who return before that time are not the people we are really talking about in terms of extensive vocational rehabilitation.

Mr. Cryne: That is correct. We are not looking for vocational rehabilitation to be offered in all cases. What we are looking for or what we are requesting is that when there is a particular need identified in a worker's case, 45 days is not the benchmark that is used before it is offered.

Mrs. Sullivan: I just wanted, if I could, to explore a little more

of the benefits continuation. This is an interesting area; we have not had much discussion of this area. Could you tell me, in your view, what members of your association would have as a general practice in terms of stopping pension contributions while a worker is away from work because of an injury?

Mr. Cryne: Stopping pension contributions?

Mrs. Sullivan: Yes.

Mr. Cryne: Many of the businesses in Ontario do not have pension plans. Only 40 per cent, I believe, of businesses in Ontario have employer-funded pension plans, so it is only to that group of employers I can really respond. In unionized environments, the norm within the pension plan where it is based on credited service is that the worker's period of absence is included in calculating the period of credited service for calculating the pension. That is the norm in the unionized plans. Our concern in terms of the pension is that we are setting aside 10 per cent of every payment that is made to an injured worker; he could be in a better situation than an individual who does not incur a work-related injury in terms of retirement pension income.

Mrs. Sullivan: You do not see that as, I suppose, in a way a compensation for the injury?

Mr. Cryne: I do not believe that is the intention of the legislation. The legislation clearly sets out that where there is an economic loss there will be compensation for that loss. If there is no economic loss in terms of the pension, then no funds should be set aside for that.

Mr. Wadsworth: You raise a very important point, if I can just add. The suggestion of employers withholding contributions by means of their pension plan to an employee who is off on workers' compensation might well be subject to a human rights complaint as far as discrimination on the basis of a handicap. I would think that is probably the forum where issues like that should be addressed, rather than creating a second avenue.

Mr. Chairman: We are actually over time, but the next group has asked for another five minutes before making the presentation. Do we have time, with agreement from the committee, for a couple more questions? Okay. Mr. McGuigan and Miss Martel each had a question.

Mr. Cryne: If I may just respond a little further on that pension issue, we really do not believe they have addressed that issue carefully enough. There are many ramifications in there. That is why we suggested they approach the Pension Commission of Ontario for further direction on that issue.

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Mr. McGuigan: My question really does not belong with the brief. I have been impressed by the number of women workers who have come in with injuries that are not as a result of an accident, but a work-related disorder. Largely, it is the case of a person working for a long time doing the same repetitive action and it is having an effect on her muscles and bones. I guess the case this morning was a checkout person who, day after day, year after year, pretty well does that same job.

I come from a fruit and vegetable growing and packing company, and I employ women. Traditionally, women work in that industry. But I had never seen any of that type of injury, probably because our work is seasonal; a person

does not do that year in and year out.

We had people talking about ergonomics and designing equipment and designing the job for the person. I suppose I will raise the ire of all the feminists with this point, but I think it is pretty well accepted that men have a greater physical strength. It is in the last number of years that women have moved into employment situations that were really designed for men. We have not paid the attention that we must pay to avoid those types of repetitive injuries. Have there been any studies done, any work, any thoughts in that area?

Mr. Cryne: There are a lot of ergonomic studies available. There are a lot of ergonomic consultants working in those areas. I will not say it is the norm in all of the businesses, but certainly there are a number of consultants out there. I know that the University of Guelph and the University of Waterloo have very large ergonomics and kinesiology departments that do address those particular problems in industries. The meat-packing industry, for example, is one of the areas in which they have done a lot of work.

Mr. McGuigan: Are they coming up with recommendations so that we can look to change?

Mr. Cryne: Yes, redesigning the workplace.

Mr. Wadsworth: I understand right now there is a \$125,000 study being done at the University of Waterloo on the very issue that you mentioned: that is, checkout counters. The funding is from employers through the Retail Merchants Association of Canada (Ontario) as well as the Occupational Health and Safety Education Authority and the Ministry of Labour combined, with some additional funding through the Industrial Accident Prevention Association.

Just in that industry, that is one subject that I know they are spending a fair bit of money trying to address.

Mr. McGuigan: I had a trip to China a few years ago and I was particularly watching for those types of things. Whenever I saw a really tough, dirty job in that country, it was more apt to be a woman than a man. Where a man could take a wheelbarrow as compared to wearing a yoke and carrying pails of dirt, the man would have the wheelbarrow and the woman would be carrying the yoke on her shoulders and she would be carrying the dirt.

However, they did tell us there was only one job they did not give to women. They have concrete barges. We do not particularly think of concrete as floating, but these barges are made of concrete and they use them in the canals. They are constantly cleaning the silt out of the bottom of the canal. They have a long pole, about 12 feet long, with a dipper at the end and they dip the silt out of the bottom of the canal. Women did not do that job, but everything else they did.

Just to go back to my previous point, having worked a lot with women in my industry I have not seen that type of repetitive injury. It seems to me we should be really doing something to make up for that and try to prevent those types of injuries.

Mr. Cryne: We agree on that.

Mr. Chairman: Thank you, Mr. McGuigan. I will give the last question or comment to Miss Martel.

Miss Martel: I have a question on page 7, the section on vocational rehabilitation. Your bottom recommendation concerns vocational rehabilitation being made mandatory. I am wondering if in that section you are stating that the onus is placed on the worker—that is, if he is not back to work after six months, he must then join vocational rehabilitation—or if you are putting the onus on the board and stating that after six months the board has to provide rehabilitation services.

Mr. Cryne: That is on both parties. In order for benefits to continue, we would request that it be mandatory.

Miss Martel: Okay. Can I ask why you would wait six months, if your concern was to get the worker—you did not want 45 days as a benchmark in terms of the initial contact from the board. Why would you want to wait six months before you started to provide actual service, if the worker needed it?

Mr. Cryne: That is a valid point, and I think our intention is to have vocational rehabilitation as early as possible, as soon as it is identified. The six months, I guess, is our way of saying that beyond that date, benefits should not continue in any particular case.

Mr. Wadsworth: I think we see some benefits, even for someone who has a significant post-traumatic injury, perhaps an amputation, even after a six-month period. You may not get the full, maximum benefits of vocational rehabilitation, but you can start the process of getting the worker involved rather than getting a doctor's letter saying, "He's just not ready for vocational rehab at this point."

Miss Martel: I guess part of the debate that has gone on in this committee is, and I have always been of the opinion, that if you offer rehabilitation most workers would be more than willing to accept it, but the problem has been that the board is not under any obligation to provide it and that if there is no statutory obligation upon the board to provide it, it will not. So we have gone back and forth in the committee about whether there should be a statutory obligation. I know you are looking at it being mandatory after six months. I do not know if that is the basis you will use. You do agree it that should be mandatory after some point, to be provided and to be taken?

Mr. Cryne: Yes.

Miss Martel: All right.

Mr. Chairman: Mr. Cryne, thank you and your colleagues for your presentation. We appreciate it.

Mr. Cryne: Thank you very much for your time.

Interjection: You are ahead of schedule.

Mr. Chairman: Yes, but it is still too late for Mr. Carrothers. He is eating his supper now.

The next presentation is from the United Steelworkers of America, Local 8782. Ray Kitchen is here. I know he is here; I see him. I do not know who he has with him. You will have to bear with the committee. At the end of the day we all get a little bit punchy.

Mr. Kitchen: I am in kind of the same boat myself.

Mr. Chairman: Mr. Kitchen, welcome to the committee. Since you are here, introduce your friend and proceed.

UNITED STEELWORKERS OF AMERICA, LOCAL 8782

Mr. Kitchen: Thank you. To my right is Peter Leibovitch. He is the president of our local. I will give just a brief background of our local. We are from a basic steel industry. This is the Stelco Lake Erie Works. It is Local 8782. Between there and the Hilton Works, I have about 16 years and I have seen a lot of very serious injuries come and go.

I would like to comment on three main sections of Bill 162 and point out some of the areas of concern that I feel have negative effects on the injured and disabled workers across Ontario.

On the surface, reinstatement of a disabled employee in the workforce sounds like a positive step until we realize there are strings and limitations attached. First, there is no coverage for workers who are already injured and off work. This may seriously jeopardize the chances of those already injured who are negotiating reinstatement into the workplace with some form of suitable job.

The law says if a worker cannot do the same work as before the accident, the company has to offer the first suitable job that may become available within two years of the accident or within one year after he or she is available for work. This does not give the worker a right to a suitable job. The worker has the right to a suitable job only if the company decides to make a job available within two years.

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I work for a large steel plant with nearly 2,000 employees. In the past, it has been very difficult to get the company to allow a disabled worker to return to work at a suitable job. In some cases, it took over two years and complaints that we have had to lay with the Ontario Human Rights Commission in order to reinstate a disabled worker.

If we, at our plant with nearly 2,000 jobs, have difficulty reinstating a disabled worker and have to go through the human rights board, I pity the poor workers who have been disabled at smaller companies and wish to be reinstated under this law, especially companies with fewer than 20 workers. According to this bill, these companies do not exist.

The time period for reinstatement is ridiculously short. Many injuries that cause permanent disability take more than one or two years to settle down. This bill would allow the employer to play games with time periods. We have experienced this in our workforce more than once.

To add insult to injury, Bill 162 proposes to ban any appeal to any independent appeals tribunal. This places the injured worker at the mercy of the employer and the Workers' Compensation Board.

Permanent Disability: Bill 162 proposes to take away the present system of permanent pensions and replace it with a dual award system, a lump sum for the impairment and a deemed loss of earnings. We reject this proposal because of the wage loss. The lump sum is an 80 to 90 per cent cutback from the value of the existing pension.

In the past, I have seen workplace injuries affect not only a worker's work life, but also family, social and all aspects of life. We must remember that an injury does not leave us when we punch out at the end of the shift as the government expects us to believe.

When I hear the phrase "lump sum," it brings to mind a comparison situation, to an award given to an injured person in an auto accident. Assume we have two similar injuries causing disability, one from an industrial accident and one from an auto accident. Taking all losses into consideration, I ask you, do you think awards will be as similar as these injuries? Both decisions are awarded by government bodies. In this case, the injured worker is not able to take this to the Workers' Compensation Appeals Tribunal, the outside appeals tribunal. This decision is made by the Workers' Compensation Board.

Rehabilitation: Once again, the injured worker is thrown at the mercy of the Workers' Compensation Board. There is no commitment to the idea of the right of rehabilitation for all workers. Instead, it is left to the board to decide if the worker is to be eligible for rehabilitation. Section 54 states the board shall assist the worker to search for employment for six months after a worker is available—more time limitations and restrictions for the worker in this case.

This bill also proposes to limit an injured worker's reassessment, which we strongly object to.

In this brief, I have discussed three sections of Bill 162 that are most likely to affect the members of our local. We feel that these and other sections of Bill 162 discriminate against age, length of service and workers in small businesses as well as in the construction industry. This bill will also deny wage loss and rehabilitation. It has very little help for those now injured.

We feel that Bill 162 will be a violation of the Human Rights Code that will discriminate against workers in small firms and the construction workers. We do not wish to sacrifice the health and welfare of our members in order that the employers save money. Bill 162, we feel, is a step back in time for injured workers. We at Local 8782 strongly oppose Bill 162.

Mr. Chairman: Thank you, Mr. Kitchen, for your very direct brief.

Mr. Lipsett: Thank you very much, Mr. Kitchen. The message I am not clear about is the fact that it starts off in the third paragraph of the first page by indicating that you would like to see Bill 162 broadened to cover workers who are already injured or off work, and then when you end up, you say you would like to see the bill withdrawn. How can you do it both ways?

Mr. Kitchen: No, that is not what I am saying. It says that on the surface it looks like it is a good idea to reinstate, but the bill has strings, limitations, time periods and throws the ball in the court of the Workers' Compensation Board and the employers, not consulting the employees. There is no support of the bill whatsoever in the first paragraph.

Mr. Lipsett: That is what I understood that to say, that you wanted the bill broadened to cover the workers who are already in jeopardy.

Mr. Kitchen: No, not at all. It just says the reinstatement end of things sounds like a good idea without the strings attached. That is basically what I am saying there.

Mr. Dietsch: Just a supplementary to that: I am not quite sure I understand. First, it says there is no coverage for workers who are already injured and off work. As I understood that paragraph, you feel workers who are already injured should have coverage. Is that not what you mean? That is what I read it to say.

Mr. Kitchen: What I am basically doing is pointing out deficiencies in the bill. As I interpret the bill, there is no coverage for workers who are already injured as far as reinstatement is concerned. If I am wrong, someone please correct me.

Mr. Dietsch: And you feel there should be?

Mr. Kitchen: What I am pointing out is that injured workers who are injured now are not all of sudden, by some miracle, going to be okay to work. These people should be included.

Mr. Chairman: I think Mr. Kitchen is also—correct me if I am wrong—talking only about the reinstatement part of the bill.

Mr. Kitchen: Yes, it is definitely the reinstatement part. It is under the heading "reinstatement." Is there confusion there?

Mr. Dietsch: I realize that. I will just drop my supplementary. Put me on the question list, please.

Mr. Chairman: All right. Mr. Carrothers.

Mr. Carrothers: I want, first, to make a comment drawing on one of the examples you gave on page 3. You made the comparison for disabilities coming from a workplace injury and an automobile accident and say you think the two should result in a similar kind of award. I would like to say I agree with you, and I think this bill is attempting to do that.

You make a comment on the bottom of page 2 that the lump sum award for pain and suffering that is going to come in here will result in an 80 per cent to 90 per cent cutback in the value of the existing pension. I am just wondering how you arrived at those numbers.

Mr. Kitchen: These are statistics gathered from a firm called Injured Workers' Consultants right here in Toronto. I have the page here but it is not submitted with my brief.

Mr. Carrothers: Are they including in that the fact that this legislation has really separated that permanent pension into its two component parts: the one part being damages, if you will, for pain and suffering, and the other part being compensation for financial impairment for wage loss; that you have to look at both parts of those in the bill, that this damage award is not replacing the permanent pension, but the two—the award for wage loss and the damage award—are replacing the pension and in fact will work out to something very much like, if not better than the present permanent pension? I am just wondering if those numbers you have include the wage loss most workers would be eligible for if they cannot return to work.

Mr. Kitchen: What it is actually a comparison of is a current pension versus the lump sum system.

Mr. Carrothers: So it does not sound as if they were. I just point

out to you that there is a wage-loss provision in here that is meant to compensate, so the permanent pension is being replaced by something more flexible and much more individual. It is certainly my feeling that it approximates the damage award that the auto accident victim would get and I think is a definite improvement.

Mr. Kitchen: Okay. Also, the hidden message there, I guess we could say, as far as comparing it to an auto injury is concerned, is that if you are injured in an auto injury, you have lawyers and all kinds of access to the courts. This bill does not even let you take it to the Workers' Compensation Appeals Tribunal.

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Mr. Carrothers: That is an issue that has come up. I think what we are hearing is that people would like more avenues of appeal. I think there has been some indication that there are going to be changes. So I take the point that your feeling is you would like more avenues of appeal from the board's decisions. If you get those, will you be more comfortable with them?

Mr. Kitchen: That is one of the concerns I have regarding not being able to take sections of this act to WCAT. In the past, if you have been following the decisions made by WCAT, there have been a lot of good decisions made by the tribunal.

Mr. Carrothers: You would feel comfortable if that kind of thing could be put in and you would perhaps look upon this more favourably, or am I just putting words in your mouth?

Mr. Kitchen: Maybe a bit more favourably. That is one point. That is a deficiency in the act.

Mrs. Marland: In your second to last paragraph, you say, "We do not wish to sacrifice the health and welfare of our members to help employers save money." We have had some discussion here today about who pays for compensation that is given or is awarded to injured workers. It can be argued, of course, that it is paid directly by the contribution of the employer to the fund. It can also be argued that the employees are giving up a certain amount of their wages because if the company did not have to pay into the fund, it probably would say it could pay higher wages. With that argument, both people are claiming that they are providing the money that ends up being a pension award for an injured worker.

When you look at the overall picture, what we are really talking about here is the cost of doing business. The cost of doing business in a job where you risk something is a very real cost in practical terms for that worker, which no amount of money can compensate for. It only compensates in the material sense, but it does not compensate for all the other things. Even when we are talking about noneconomic things, it still is not a compensation.

As someone representing workers, would you like to have seen in the bill something that recognizes that, in fairness, everybody contributes to that compensation? Whether it is the cost of doing business or whether it is building a house or a product, the consumer who buys the house or the product is paying for the cost of that product, and the cost of that product is providing protection for workers.

The worker in fact is probably receiving a lower wage, as I say, because

somebody has to contribute to this fund. No matter where the money comes from—it was because of your statement here where you say, "to help employers save money." That may not necessarily be as harsh as you want it to be because it may not be a fact. We are not sure that employers are going to save money.

Do you feel as a spokesperson for your group that you would like to have seen something that gave them the actual protection they need, money aside? Certainly, we have talked a lot about rehabilitation, but there is the actual access to those services and to a true compensation that means as much as it possibly can for the worker who is injured.

Mr. Kitchen: I think that is the point we are all trying to achieve, but there are cutbacks and deficiencies in this bill that point towards the employer saving money.

I make a comparison in my brief to auto insurance. There has been a lot of controversy in the last little while about auto insurance—raising rates and that. It appears to me that if auto insurers have a lot of payouts, what they do is say: "What we are going to do is raise everybody's rates in Ontario. We will live happily ever after and everyone will just pay more money." If the Workers' Compensation Board needs more money, it will keep all the employers' rates the same and just cut the benefits of the worker.

Mrs. Marland: What you are saying in that comparison is that if more money is needed, the people who have to be protected pay; everybody pays. I think the point is that with workers' compensation, everybody does pay.

Mr. Kitchen: The company pays the money and the workers pay with their fingers, toes, lives and that kind of thing.

Mrs. Marland: Or if they are not injured, they still have insurance coverage that they are also paying for.

Mr. Kitchen: Yes they are, but we do not want to forget that back before my time, in 1915, when they brought workers' compensation into place—

Mrs. Marland: They forfeited the right to sue.

Mr. Kitchen: They forfeited the right to sue. In return, you got payment for your injuries and there was no waiting time. Now what have we here? Years later, there are all kinds of appeals and people's claims are being questioned. Sometimes it takes as much to get a workers' compensation claim heard as it probably would a lawsuit in provincial court.

Mrs. Marland: Oh, sure, but I think the point I wanted to ask you, about this statement you are making here about helping employers save money, is that there is nothing in this bill that necessarily is going to do that. I do not think the bill guarantees employers will save money. We do not even know the cost of administering the bill because the administration aspect of it is so complex. There are a whole lot of aspects of it that have not been looked into, in the way it is currently drafted. I do not think in the end perhaps it will help employers save money, which is what you are saying here, and there certainly may well be a cost to workers.

Mr. Kitchen: Maybe they will not get a discount but they would not get a raise for a period of time. There are just things that you look at in the bill and see where there are cuts being made, no long-term pensions—

Mrs. Marland: Two assessments.

Mr. Kitchen: Thank you. There are little strings attached to the bill. They took the financial aspect of things into consideration in the bill, like any business would when you talk about the cost of doing business, but then again, you do not want to sacrifice fingers and toes and lives.

In my job out there, I am a millwright in reality, so I see a lot of industrial injuries where people have bad backs and cannot move. Actually, one of my good friends just got a very serious back injury. We had a fight just to get the board to recognize that claim.

Miss Martel: I will be brief. Concerning the assessments, you mentioned early on in your brief that you see a large number of serious accidents in your workplace. I wonder if you think it is very fair that under this bill a worker has only two chances during the whole course of his lifetime to go to the board and appeal the size of his pension, the size of his permanent disability.

Mr. Kitchen: Could you please repeat that question?

Miss Martel: You have at the bottom of page 3, "This bill also proposes to limit an injured worker's reassessment, which we strongly object to." Under the bill, of course, a worker can only be reassessed twice during the course of his lifetime. I wonder if you think it is very fair that a worker is limited to only going to the board twice during the whole course of his lifetime.

Mr. Kitchen: Definitely not. Injuries, especially back injuries, deteriorate over a period of time. If you are allowed two assessments and the game is over, that is definitely not fair. What you are actually doing is that down the road, you could quite conceivably have a worker with—we will do it in percentages; the board likes to deal in percentages—a 30 per cent disability and he is receiving benefits for 10 per cent.

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Miss Martel: Do you think there is any doctor in the province who is going to be able to assess what that worker's unanticipated deterioration is going to be, as is proposed in the bill as well?

Mr. Kitchen: Definitely not.

Miss Martel: Thank you.

Mr. Dietsch: Now that I have the floor, I would like to go back to the part that confused me a bit in terms of understanding the point you are raising. Your brief says, "First of all, there is no coverage for workers who are already injured and off work." Then you go on to say, "This may seriously jeopardize the chances of those already injured that are negotiating reinstatement into the workplace." Do you feel there should be coverage for already injured workers to go back into the workplace?

Mr. Kitchen: Yes, I do.

Mr. Dietsch: That clarifies that. Thank you. The other point I would like to ask you about is rehabilitation, where you are dealing with section 54a, where the board assists the worker to search for employment for six months. Your comment is, "More time limitations and restrictions."

But as I read subsection 54a(4), it indicates that the worker's vocational rehabilitation program includes up to six months of employment assistance and may extend for a further six months. Do you feel that is not long enough, six months and the potential for an additional six months?

Mr. Kitchen: I have problems with time limits. How can the board determine how long it will take for an injury to heal?

Mr. Dietsch: No. I am talking about job assistance after rehabilitation.

Mr. Kitchen: I am just using that as an example. Okay, on job assistance, it depends on the economics of the time, the type of injury and the type of disability. With the board saying, "We'll help you for six months and then it's up to us if we want to do it again," there is nothing concrete in the legislation that actually says the board definitely has to assist a person.

Mr. Dietsch: You confused me. Do you have a copy of the bill?

Mr. Kitchen: Yes. I have one right here.

Mr. Dietsch: Subsection 54a(4), page 12: "If a worker's vocational rehabilitation program under this section includes assistance in seeking employment, the board shall assist the worker to search for employment for a period of up to six months after the worker is available for employment and the board may extend its assistance for a further period of up to six months."

Do you feel this six-month time limit in assisting a rehabilitated worker to find work, if he or she does not have work where they were, with that possible extension for another six, so that it could be a year, is long enough or what is your opinion on that?

Mr. Kitchen: Okay. I understand you now. I cannot see why there is a time limit in there whatsoever. If it takes a year and a half to find a suitable job for an injured worker, I will take a year and a half.

Mr. Dietsch: You feel the onus should be there for whatever time.

Mr. Kitchen: Scratch the time limit. That is what I am saying, basically. That is the problem I have with that. There are some parts of the bill that are positive except that you have too many strings attached.

Mr. Dietsch: I see.

Mr. Kitchen: You have time limits; or if the employer feels he has a suitable job for the employee. There are too many time limits and nothing really—

Mr. Dietsch: If I understand you correctly, if the board assists the person to find work, you feel that is a positive part of the bill, but you are concerned about the time limits attached to it.

Mr. Kitchen: Peter wants to say something here.

Mr. Leibovitch: With regard to your question on time limits, let's say a person has been on a job for 15 years and he has a family and a mortgage and everything else; he gets hurt and he cannot go back to his original job

because they have not made one available; and because of his injury he has to be rehabilitated and he needs to find work that will allow him to keep his standard of living at least similar to what he had before he was hurt. We do not think there should be any time limit. We do not understand why there would be a time limit. It is not the person's fault that he has been injured and the nature of the injury, God knows what it would be like, but why should he then be under time limits or constraints for him to find another job or suitable vocation?

We do believe that part of the responsibility of the compensation system is to make sure that either the worker is reinstated to his original place of work or, if that is impossible, to a place of work which would keep him up to the standard of living that he had previous to his injury. We do not believe that because a person is injured he should suffer for the rest of his life because he was involved in an accident.

Mr. Dietsch: I agree with you in terms that it is good to be able to assist these workers to find work once they are rehabilitated and I think that is commendable. I thought that was a good part of the bill, because I know from previous experience the difficulties for workers who are injured to find work. I guess I understood you to say you agreed that this is a better part of the bill, but that you have those concerns about those time limits.

You, the same as I do, want to be able to get these people back to work. Am I correct in that?

Mr. Leibovitch: If it is possible for them to work, we want them to work, yes, and we want them to work at a standard that is comparable to before they were injured, because the lifestyles of their families do not change.

Mr. McGuigan: My thoughts and questions kind of follow the same line. I try to look forward to the practical aspects of how this works. At the top of page 2, a steel mill with 2,000 employees—of course, being an MPP, I have been in a lot of different industries, but I must confess I have never been in a steel mill. I would like to do that some day. I do not think I want to work there at this stage in my life, but it conjures up a heavy industry and pretty heavy jobs. It is not an assembly job where you are putting small parts together; it is a heavy job.

What I would see is that it would be pretty hard for a steel company to have enough light-duty jobs to really take care of the injuries that occur in that industry, especially when you consider that a lot of them are back injuries by the very nature of the work. You are probably correct in saying there are not many light jobs available.

Mr. Kitchen: I would hate to say you are not correct, but you are not. In modern-day technology, there are quite a few jobs that do not require slugging and yanking with your back, pulling your back out. Maybe you would like a tour of the plant and you could actually have a look. There are 2,000 jobs that are a combination of hourly and salaried jobs. There was one fellow who was off because he had a lifting incapacity; he had back injury. I could see jobs that he could do in the plant that the company was trying to say were not available. As soon as his time limits ran out, the company hired a person off the street to fill that job. These are the problems that we run into in the workforce.

Mr. McGuigan: I am not so sure you could do that under these amendments, but in any case it would strike me that it would naturally follow

that those light-duty jobs would go to the older people. They have seniority, for one thing, and they have an attachment to their company. Probably if anybody is going to get preferential treatment, it would be those people. If I am wrong in that, tell me, but I sort of gathered from other people who were making presentations here that this is the case.

1820

Mr. Kitchen: No. Definitely, we respect seniority first. The instance that I gave, though, was that we have provisions for time limits depending on the amount of seniority, and the company played games till the fellow's time limits ran out and it hired a person off the street. The person it hired had no seniority whatsoever, so seniority did not come into play in this situation I just described.

Mr. McGuigan: I guess, given the Human Rights Code, I have a hard time understanding that. It seems to me that under the code that should not have happened, but we will pass by that.

What I am coming to is, probably in a practical sense, with a younger person who might be incapacitated, again with probably a back injury, it does not make a lot of sense that at that age that person be retrained and perhaps given a job outside the steel industry, but he could be given a wage-loss supplement so that he would do as you say, maintain the lifestyle and support his family to almost the same level as before. Perhaps with the opportunities for advancement, he might even end up at a higher standard of living.

Does it not seem, from a practical standpoint, that would be better than actually creating a phoney job where the person spends the rest of his life standing there counting something going by on a conveyor or something? Does that side of this thing not have any merit?

Mr. Leibovitch: The steel industry is a changing industry. I do not even think you can compare it to the kind of production-line work that you are talking about. A lot of our jobs that are high-paying jobs are held by young people. We have a young workforce in Lake Erie. They are high-paying jobs and they are light-duty jobs. Actually, we do not have the kind of jobs that you would normally associate with steelmaking, because of the automation. We have one of the most highly automated plants in North America. If you go through the plants, you will see many people working, using computers and computer technology, within production and also in maintenance, with our technicians, our utility, our instrumentation people, electronics people. Much of that work is not back work, but it is mind work. It is something you have to be trained to do. It takes years to train people into doing it well. There is a lot of room for training.

We believe that most of our people could be absorbed into the workforce doing productive work in the steel industry because there is a lot of room to put people in, not doing back-breaking work. In many cases, the higher-paying jobs are not the ones where you strain your back; it is just the opposite.

Mr. McGuigan: Just so I can put the thing together in my mind, who are the people in the steel mill? You describe it as being much different from what I would have had in my mind. Who are the people who do get injured?

Mr. Kitchen: People have been injured in all aspects of the jobs. I would say the majority of people are the heavy kinds of things. Mechanical people would injure their backs. I think we have had an injury from every

discipline in the steel mill. It is not because one guy has a more strenuous job than the other guy. There are injuries that crop up from burns. A person taking a sample on a shop floor gets severely burned. He did not injure his back by lifting things too heavy or swinging a sledge-hammer. He was basically in the wrong place at the wrong time.

We have to get out of our minds the idea of every job in the steel mill being strenuous. There are pulpit operator jobs. Actually, the steel industry has come a long way as far as its being a back-breaking industry is concerned; mind you, those jobs still exist, but injuries still exist too.

Mr. Chairman: We are out of time. We will have a final supplementary from Mrs. Sullivan.

Mrs. Sullivan: This really follows from your comments in response to Mr. McGuigan. Where people have the kind of training that they have in your plant and it is possible for them to move perhaps with the same employer into another location or another local, do you see a problem in integrating the injured worker into that site in terms of your own seniority provisions within the union?

Mr. Kitchen: At points there may be problems with seniority. We feel that seniority should prevail.

Mr. Chairman: Thank you very much for your appearance before the committee. We appreciate it.

Mr. Kitchen: I would like to thank you for giving us the time to give some remarks from the workshop floor.

Mr. Chairman: Right, we are pleased to.

Mr. Dietsch: Many of us have been there.

Mr. Kitchen: That is good to hear.

Mr. Chairman: The final presentation of the day is from the Energy and Chemical Workers Union, Local 513. Patricia Hart is here. I know you did not pick this time slot, but nevertheless we are pleased that you are able to make it. Please make yourself comfortable. I believe you do not have copies of your brief at this point, but perhaps you could send them in at a later time to us.

Ms. Hart: Yes, I can do that. As you know, I am filling in for the president of the local, Bonita MacDonald. That information was not presented to me on Monday, but I will make sure that you do receive the copies.

ENERGY AND CHEMICAL WORKERS UNION, LOCAL 513

Ms. Hart: My name is Patricia Hart. I am with the Energy and Chemical Workers Union, Local 513, Consumers Gas, and I am presenting this on behalf of the Energy and Chemical Workers Union. I will now proceed with the foreword.

The Energy and Chemical Workers Union is a trade union of 35,000 members across Canada, approximately half of whom are located in Ontario. We welcome this opportunity to present this submission and hope it will be of assistance in the formulation of the final report of the committee.

This is our introduction: Any discourse on workers' compensation law and policy always begins with a description of the historic tradeoff underlining the introduction of the original compensation legislation in 1915. Employees in Ontario gave up their right to sue their employers in court for full recovery of losses incurred, including pain and suffering. In return, employees were guaranteed protection against losses due to occupational injuries and disease, irrespective of the fault and the ability of the employer to pay.

Although there have been complaints about the level of benefits provided by the system, particularly in recent years, as compared to the tort action, there has been no concerted push to reconsider the wisdom of that bargain to date. The passage of Bill 162 may well provide the impetus for such re-evaluation.

The compensation system embodied within Bill 162 is a radical departure from what is in place today. Although critics of the present system are quick to point out that it offers inadequate protection to those who need it, the fact remains that it does not guarantee some degree of protection for all and that it has to be proven to be a workable system. If we are to move away from a system of guaranteed lifetime pensions for permanent disability and move to some form of actual wage-loss replacement, then the basis of the tradeoff will be fundamentally altered. In essence, the guaranteed pension will be replaced by a guarantee that full income protection will be available whenever needed.

Further, if that need is to be determined by earnings potential, as in Bill 162, then there must be a commitment by the WCB to provide comprehensive, effective vocational rehabilitational services to allow the injured worker to reach his or her maximum potential and thereby mitigate his or her losses.

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This is the standard by which Bill 162 must be evaluated and assessed. In our view, Bill 162 falls far short of this standard. It does not guarantee that every injured worker will receive income replacement whenever a loss occurs, and it does not provide the opportunity for every injured worker to protect himself through effective rehabilitation. Below, we focus on those aspects of Bill 162 that have led us to these conclusions.

Compensation for economic and noneconomic loss: Although there is a general agreement on the inadequacy of the present system of compensation for permanent partial disability, controversy has been raging in Ontario since 1980 about how to reform it. The details of this battle have been chronicled in Paul Weiler's report, Permanent Partial Disability: Alternative Models for Compensation, December 1986, and need not be elaborated on herein.

Ironically, the solution to this dilemma found within Bill 162 differs quite radically from what the present government advocated while in opposition. These proposals are contained in the final report of the standing committee on resources development, December 1983, which dealt with the 1980 Weiler report and the white paper on the Workers' Compensation Act. At that time, the Liberal Party proposed a lifetime pension, based on the degree of physical impairment applied to one half the average industrial wage, as compensation for noneconomic effects of a work-related injury.

In addition, a wage-loss-related periodic payment would be made in the event of a difference between the disability pension and pre-accident earnings adjusted for inflation. The total of these payments would not exceed

pre-accident earnings. The lump sum approach, as proposed in the white paper, and retained in Bill 162, was described as "inadequate recognition of the fact that the disability suffered by the worker is a lifetime 24-hour-a-day reduction in his enjoyment of all facets of his existence."

The Liberal members of the standing committee were "convinced that this system will provide a continuing incentive to employers to reduce accident rates, and to accept injured workers back in their employ where suitable work is available." As noted above, Bill 162 represents a complete reversal of philosophy compared to the Liberal plan in 1983. The previous proposal would have provided a much larger benefit in the form of periodic pensions, with the wage-loss factor being used as a top-up mechanism to guarantee no loss of actual income.

Bill 162 does the opposite. It reverts to the minimal lump sum payment as the basic benefit, with the possibility of a periodic pension for wage loss if certain conditions are met. As a result, it is clear that the majority of injured workers will be paid less under Bill 162 than under the previous Liberal plan and that this group is not restricted to the overcompensated workers who return to work at no loss in pay.

Ironically, there is even serious doubt that Bill 162 will provide as much to the injured workers as the white paper proposal that the Liberals criticized as being inadequate. The theoretical justification for the actual wage-loss method of compensation is that it eliminates the need to speculate about the future earnings loss resulting from a permanent disability compared to the projected wage-loss systems that attempt to estimate lifetime earnings lost as a result of a physical impairment.

Compensation will be paid to only those injured workers who experience actual loss of earnings following their injuries. This, in quotes, pure wage-loss approach was reflected in the white paper proposal, which created an open-ended lifetime right to compensation for loss of earnings attributable to the workplace injury. Although it was acknowledged that there were administrative and practical difficulties associated with the pure wage-loss approach, proponents of this system were confident these could be overcome.

Bill 162 abandons the pure wage-loss method and replaces it with a model that preserves all the advantages of that method and fails to incorporate any of the advantages of the projected wage-loss system. Under Bill 162, entitlement to compensation for permanent disability benefits is restricted to workers temporarily disabled for 12 consecutive months or workers determined by the board to be permanently impaired during that period. If no earnings loss is suffered at that point in time, no benefits are payable in respect of economic losses.

Although the ministry's background material suggests this decision is subject to review, that is not entirely clear from the wording of subsection 45a(8) which requires the board to review "the amount of compensation payable" in certain circumstances. However, since the board is required to vary the amount of compensation payable only if there is at least a 10 per cent variation of the amount being paid, this would suggest that the review process applies only to workers already in receipt of benefits and not to workers previously declared ineligible.

Obviously, if workers were precluded from making claims after this initial review, this would represent a total denial of the commitment to provide compensation for future loss of earnings arising from the injury. Even

if an injured worker does establish an initial entitlement to wage-loss benefits, he or she is by no means assured that this benefit will be continued during his or her lifetime. Statutory reviews will be carried out after two and five years, at which time the amount of benefits can be adjusted as mentioned above.

In addition, section 45a does not preclude the board from instigating a review outside these time frames, since the benefit is payable "for such period...as the board considers appropriate in the circumstances." On the other hand, a worker can request a review only if the board increases his or her permanent impairment rate. That can only happen if the worker proves that he or she has suffered "a significant deterioration of condition that was not anticipated." No worker can apply more than twice for such a review. Clearly, these limitations and restrictions will disentitle many workers from eligibility for benefits, even though a wage loss has been suffered.

For example, workers suffering from a progressive lung disease such as asbestosis, or disabling back conditions will almost certainly be shortchanged by the limitation on the number of reviews. In addition, it is unclear whether such workers would qualify, since by the nature of their condition, physical deterioration is inevitable and therefore anticipated.

Basing the right to request a review on the existence of a serious physical deterioration raises some rather puzzling questions. The primary justification for a dual award system that separates earnings loss from a physical impairment rating is the alleged lack of predictable relationship between the two. If, however, the initial entitlement is based upon the existence of an earnings loss, then why should the right to request a review be restricted to the cases of physical deterioration? Either we have a wage-loss system or we do not.

The final hurdle the injured worker must overcome is in the calculation of the benefits payable. All compensation systems based on the wage-loss model include a provision that the injured worker may be deemed to have received wages that could have been earned in another job, whether he or she actually is employed or not. The white paper, for example, proposed that this deeming should take place in the event an injured worker refused a job that was suitable and available. Although Bill 162 ignores most of the common features of wage-loss models, not surprisingly, it does incorporate a version of the deeming clause.

Specifically, subsection 45a(3) lists the factors to be taken into consideration "in determining the amount that a worker is able to earn in suitable and available employment." These factors include the worker's "personal and vocational characteristics," "prospects for successful medical and vocational rehabilitation," and "such other factors as may be prescribed in the regulations."

Bill 162 does not provide that a job must be offered and refused, as recommended by Weiler and adopted in the white paper. This certainly leaves the board with considerable discretion to administer and interpret the legislation as it sees fit. Given the lack of sensitivity the board has demonstrated in its treatment of injured workers covered by similar language that exists in the present partial disability sections of the act, it is difficult to have much confidence that this discretionary power will be exercised fairly.

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Unfortunately, the propensity of the board to invoke section 86n reviews of decisions it does not like leaves considerable doubt as to the availability of the Workers' Compensation Appeals Tribunal to curb administrative excesses that may arise under this section.

In summary, it is our view that the net effect of the proposed changes to the permanent pension system contained in Bill 162 will undoubtedly provide lessened benefits to the majority of permanently partially disabled workers as compared to the existing system, the white paper, the Weiler recommendations or the Liberal Party's 1983 proposal.

Whether these savings will be redistributed to those who need them is most highly questionable. The combination of board discretion, time restrictions and stringent criteria for entitlement will restrict the flow to a mere trickle. The more likely result is that the savings realized by reducing benefits will be used to pay for the added administrative costs incurred by the board in generating these savings. For injured workers, there will be few winners and many losers.

Although their reasons may differ, most interested parties have supported the introduction of a statutory obligation on the accident employer to re-employ injured workers. From a rehabilitation standpoint, this clearly represents the best opportunity to minimize or mitigate the economic consequences of a serious injury.

Unfortunately, Bill 162 makes only a tentative move in this direction. By exempting the construction industry and employers with 20 or fewer workers, Bill 162 removes the statutory right to reinstatement for those who need it most. Surely it is the construction workers who are among the most likely to benefit and the unorganized working for small employers who are among the most likely to require some form of job protection in the event of a serious injury.

Again, where Bill 162 does apply, the conditions and restrictions placed upon the right to re-employment impact on those most in need of assistance. One would think that a compensation system based upon the actual-wage-loss model would do everything possible to ensure an injured worker returns to work if he or she is able.

Why place exclusionary time limits, time limits that do not reflect standard recovery rates for many types of common injuries, in the way of injured workers who are otherwise able to exercise their right to return? Whose interest is served by blocking the path of a possible return to work?

Parenthetically, it should be noted that the white paper contained an additional limited right to bump for workers with more than 10 years' seniority. Even this narrow right has been dropped in Bill 162.

Finally, even these very modest reinstatement rights for injured workers are not safeguarded by effective remedies in Bill 162. The only penalties for noncompliance are discretionary financial levies that may be imposed by the board. Specifically, the employer is subject to a penalty in the amount of 90 per cent of the worker's net average earnings for the year preceding the injury and may be ordered to pay benefits to the injured worker for a maximum of one year. That hardly seems like an effective deterrent to discourage recalcitrant employers.

Compare this to the white paper proposal, which imposed a continuing liability on the employer for all wage-loss payments made to the injured worker as a result of the employer's refusal to reinstate.

On rehabilitation, in his first report, Reshaping Workers' Compensation for Ontario, Professor Weiler acknowledged that vocational rehabilitation was directly implicated, in the central focus of his recommendations on page 23:

"If our task is to maintain a decent income for the duration of such an injury, we must also be concerned with minimizing the length of time or the extent to which that injury prevents a return to work. We want to contain the cost of the program to employers (and those to whom they will pass on these costs), to secure the benefit of productive work for the community, and, most important, to enhance the sense of self-worth of the injured worker, by enabling him to look after himself rather than remain dependent on others."

The advantages of an effective rehabilitation program to a compensation system based on actual wage loss are obvious and Weiler's focus on this issue was reflected in the white paper, which clearly enunciated the board's mandate to begin the task of building such a program. Ten separate functions were identified and assigned to the board to assist the injured worker in returning to work, lessening or removing any handicap resulting from the injury and returning to a normal family and social life. Unfortunately, these amendments were never introduced into the act.

Subsequently, in 1986, a task force was appointed to inquire into vocational rehabilitational services at the Workers' Compensation Board. The task force produced a 297-page report entitled An Injury to One is an Injury to All: Towards Dignity and Independence for the Injured Worker, which contained 84 detailed recommendations for reform, all but one of which was unanimous.

Given this background and the events leading up to the introduction of Bill 162, expectations were high that the issue of vocational rehabilitation would be the major focus of the legislation. Unfortunately, this optimism has proven to be ill-placed. Although the ministry claims that the amendments incorporate the central themes of the Minna-Majesky task force, that view is apparently not shared by the authors.

At best, the amendments attempt to deal with the issue of early intervention. But, again, the application is limited to workers receiving temporary benefits under section 40. The time limits are prescribed and the obligations on the board to provide tangible assistance are very narrow. This is far short of what the task force recommended and, once again, does not even match the vision of the white paper in this respect.

In our view, if compensation benefits are to be based upon what the board deems to be the earnings that are attributed to suitable and available employment, then the board must be obliged by law to take whatever measures are necessary to facilitate an injured worker's return to productive employment. It is both unfair and unacceptable to deny benefits to injured workers on the basis of potentially available earnings without any corresponding obligation to turn that potential into a real job. This obligation cannot be left to the discretion of the board, the same board that was so thoroughly and convincingly condemned by the task force.

In conclusion, it is our view that the net effect of the proposed changes contained in Bill 162 will be to provide fewer benefits to the

majority of workers who become permanently disabled in the future as compared to the existing system. Whether Bill 162 will provide significantly increased benefits to some injured workers remains to be seen. Human nature being what it is, it is not likely that the reduction in benefits will be greeted by much enthusiasm, as the reaction to Bill 162 has already shown.

As the majority of disabled workers is likely to receive considerably less under the provisions of Bill 162, it is only a matter of time before pressure will begin to mount to renegotiate the historic tradeoff referred to in the introduction of this paper. The fact is that if Bill 162 is passed in its present form, the choice between initiating a tort action versus accepting a minimal lump sum payment with the possibility of receiving future wage-loss benefits from the Workers' Compensation Board is far from clear-cut.

While the courts are prepared to compensate for the loss of earning capacity if liability is established, Bill 162 will not do so unless the injured worker clears all the administrative and procedural hurdles created therein. Why should the disabled worker be expected to give up the bird in the hand for the one in the bush that he or she may never catch? We do not believe that Bill 162 provides a satisfactory answer to that question.

Bill 162 is no solution to the myriad of problems besetting the worker's compensation system in Ontario. It simply adds fuel to the fire by tilting the delicate balance of fairness within the system away from the injured workers it is supposed to serve. It will inject more complexity into the system and introduce new opportunities for conflict, both of which will bring it one step closer to eventual collapse.

Mr. Chairman: Thank you for a very fine brief. I really do hope you will get us copies.

Ms. Hart: I shall.

Mr. Chairman: I really must commend you on your memory. You have a very fine memory; you remember what happened a few years ago. It is always good to know that there are people out there.

Mrs. Marland: It is probably the best, I suppose, depending where one comes from, but in my opinion it is the best presentation we have had, because of the historical perspective. I do not know who is responsible for all the work that must have gone into the preparation of that brief—

Ms. Hart: It was not I. Ms. MacDonald, the president of our local, was to present it tonight. The paper was prepared, I understand, by Mr. Ublansky and Mr. Nelson of the Energy and Chemical Workers Union, and was discussed with other members or the presidents of the local unions.

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Mrs. Marland: It is interesting, because we have had the union before us before in—where was it?—Sudbury. I mean, I recognize it is another local, but that is very impressive and I do congratulate whoever is responsible for the preparation. I appreciate your presentation.

Ms. Hart: Thank you very kindly. Being involved very heavily with health and safety, I appreciate this opportunity.

Miss Martel: I do not have a question, because I do not think the

brief begs any questions. Let me just say that I want to congratulate whoever put that together too, because it was bang on. Be sure to give us a copy, because I am sure several of us will be referring to it extensively when we start to deal with this clause-by-clause. Thank you.

Ms. Hart: I appreciate that, and I will pass on your comments.

Mr. Chairman: So you do understand that people would like a copy of it.

Ms. Hart: Yes, tomorrow.

Mr. Dietsch: I have a question and it is in relationship to the fact that a number of times throughout your presentation you made reference to the tort reform. I would just like to ask you, are you suggesting that method of settling things within the court system would be better? I could not help but draw that conclusion from your remarks after the number of times that you very explicitly put it forward.

Ms. Hart: Having had the opportunity to read it only once, which was last night, I gathered that conclusion myself, that with the tort system, yes, there is the—

Mr. Dietsch: As an individual who has represented a number of those kinds of workers, I find that rather interesting. I do not have the expertise of those individuals who profess to practise law in Ontario, but I do know that certainly, through my experience, it has been a long and drawn-out process and it does not guarantee a thing to go through the court process. I find the fact that individuals from the labour movement, of which I am a part, would consider going back to that old style—

Ms. Hart: I really cannot answer that, sir, on the basis that unless I investigated it myself a little further—I mean, I represent workers who have repetitive strain injuries. I know how that aspect of it works and how I work and follow that field.

I read the information provided to me here, as I say. Where they obtained a lot of the tort attitude as such, I am quite sure, can be backed up, if you wish any further information.

In so far as going before the courts is concerned, I agree that there are times when going before the court is drawn out, but very often drawing something out also brings something. Other people can pick up on something and use that.

Mr. Dietsch: I guess the thing, too, that I draw from that conclusion is that going through the court process does not guarantee me anything.

Ms. Hart: That is right.

Mr. Dietsch: It guarantees the lawyers, on a number of occasions, a fairly good way of living, but on the other side of that coin, it does not guarantee me as a worker who has been injured in the past anything in relationship to benefits for loss of wages.

Ms. Hart: That is a good point.

Mr. Dietsch: I found that part of your brief very interesting, and I commend you for the fervour that you put forward in your presentation. You certainly commanded the attention of the committee.

Mr. Chairman: Mr. Carrothers has a question as well.

Mr. Carrothers: It may be more of a comment since we started talking about the tort system. Unfortunately, I was out of the room when you made those comments, but I would like to just make the general observation that in the system, as we discuss its problems and try to fix them, we should not lose sight of the fact that—I do not know what it is, 90 per cent, 94 per cent, 93 per cent—some percentage of claims basically get handled through the system. The disputes are over six per cent, seven per cent or eight per cent of the claims.

Ms. Hart: Yes.

Mr. Carrothers: Essentially, it is a no-fault system. In any system you do get disputes and you have to have some mechanism of finding some resolution to that dispute. We should not lose sight of that fact, because if we did not have it, if we were just in the courts, every single case would have to go through a system. Whether or not it did not make it into the courtroom and was settled, you would have time delays on every single case. I am not sure that would improve anything at all. I think it would take away.

One of things I like about Bill 162 is that I think it is incorporating into the process some of the elements that a tort damage assessment would go through. That is what I like about it. The challenge before us seems to be to make that happen, because, as many commentators have said, there may be some things we can do to this bill to make it work better. The objective is, as I read it, to try to inject some of those elements into the way a worker is going to be compensated, which I think is an improvement.

It may be so late that I have lost track of what is going—

Ms. Hart: I will be sure you receive a copy and I will pass on your comments. Thank you.

Mr. Chairman: Thank you for your presentation.

The committee is adjourned until tomorrow at 10 a.m. in the Amethyst Room.

The committee adjourned at 6:55 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

WORKERS' COMPENSATION AMENDMENT ACT
LOI MODIFIANT LA LOI SUR LES ACCIDENTS DU TRAVAIL

THURSDAY, MARCH 23, 1989

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Black, Kenneth H. (Muskoka-Georgian Bay L)
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Marland, Margaret (Mississauga South PC)
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Tatham, Charlie (Oxford L)
Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown
Cureatz, Sam L. (Durham East PC) for Mr. Wiseman
Lipsett, Ron (Grey L) for Mr. Tatham
Martel, Shelley (Sudbury East NDP) for Mrs. Grier
Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses/Témoins :

From the Toronto Injured Workers Advocates Group:

Endicott, Marion, Community Legal Worker; Injured Workers' Consultants
Godbout, Nicole, Staff Lawyer
Leyraud, Pierre, Union des Travailleurs Accidentés de Montréal
Parizeau, M^e François, Barreau du Québec
McKinnon, John, Staff Lawyer, Injured Workers' Consultants
Spano, Sebastian, Community Legal Worker, Industrial Accident Victims Group of
Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, March 23, 1989

The committee met at 10:13 a.m. in room 151.

WORKERS' COMPENSATION AMENDMENT ACT
(continued)

LOI MODIFIANT LA LOI SUR LES ACCIDENTS DU TRAVAIL
(suite)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The committee will come to order as we continue our look at Bill 162. This is the public hearings part of the process. When the public hearings have been completed, we will then deal with the bill on a clause-by-clause basis in order to determine whether any amendments shall be made to the bill.

Today we have a packed agenda and a very important day in the process, in that the entire day is for the injured workers to express their views on Bill 162. We are very pleased that they are here.

This afternoon we will move to Convocation Hall for two o'clock for the major presentations for the afternoon. We will have Convocation Hall until 6 p.m., at which point we must vacate the premises. I think I speak for the committee when I say that we are looking forward very much to the day, because we know of the work that the advocates for injured workers do, not just on Bill 162 but on an ongoing basis. So we are very pleased that this day has been arranged and that the entire day is dedicated to those people who work on behalf of injured workers. Without any further preamble, I turn it over to Phil Biggin or Marion. Who is the spokesperson to start with?

Ms. Endicott: Nicole.

Mr. Chairman: Sorry. I was wrong. Nicole, we will turn the beginning over to you. We are sitting from now until 12 and then we break and reconvene again at two at Convocation Hall. Welcome to the committee.

TORONTO INJURED WORKERS ADVOCATES GROUP

Ms. Godbout: With the committee's indulgence, I would like to make a clarification or a request at the outset. The group that is scheduled to speak first this morning is the Toronto Injured Workers Advocates Group, to be followed at 11 o'clock by the Industrial Accident Victims Group of Ontario and in the afternoon at Convocation Hall by the Union of Injured Workers.

These groups have a unanimous voice and therefore are presenting to you a single brief today. Therefore, throughout the day, we would ask you to please consider the submission of one group to be the submissions of every other group, since we have but one voice in this matter.

Mr. Chairman: I cannot imagine that being a problem for the committee since the entire day is for the injured workers' groups.

Ms. Godbout: Thank you. We would like to say first that there has been a lot of debate on workers' compensation in the past 10 years and while the voice of injured workers has perhaps often been heard, it seems to us that it has not yet been heeded. We have studied Bill 162 very carefully, but unfortunately we cannot say that it addresses the major demands that injured workers have been making.

Mr. Dietsch: I was just asking whether there was a copy that we could follow along with. Will that be available later today?

Ms. Godbout: The brief will be available at two o'clock this afternoon. I apologize for the delay.

The bill does not even contain the strengthening of vocational rehabilitation provisions, not for current injured workers nor for future injured workers. After the strong recommendations of the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board, this is something that injured workers would have anticipated seeing in that bill.

The bill's main purpose appears to be to accommodate mainly the concerns of employers—concerns over costs. While the minister has said that it is time to ensure fairness in compensation and that this bill will bring fairness and certainty to workers' compensation, we see that this bill is flawed in its conception and in its drafting, as well.

Finally, it is clear that the minister did not consult with injured workers or with labour on the question of compensation reform and that initially the government did not intend to hold hearings. But now that workers do have hearings, it is also very regrettable that almost half of those who wished to have their views heard will not be heard by this committee.

The rush to pass this bill seems to be great, in fact so great that it makes us wonder whether you are truly listening. It is public input that has disclosed the serious weaknesses of Bill 162. Considering this, it surely behooves the committee to hear from every possible interested person or group, each of which brings its own particular insight.

As one of the lucky ones to stand before you, we hope that this committee and the government will listen to what injured workers have to say, will listen to what their representatives have to say and will study their recommendations very seriously. As long as we are in the process of changing workers' compensation, after this very long debate, let's do it right. We believe the government is about to make a serious mistake if it intends to pass Bill 162.

At this point, we would like to address the question of the experience in other jurisdictions that have adopted principles similar to the ones contained in Bill 162. Ms. Endicott will be addressing this point.

Ms. Endicott: I would like to talk to you, as Nicole has indicated, about the experience in other jurisdictions. To begin with, let's note that we are being told that Bill 162 does not contain the concept of deeming in it. We have truly studied Bill 162 very, very carefully. It is our understanding of the language that we read in it that the bill rests on the concept of deeming, that this is the cornerstone of Bill 162.

I think you have probably come to understand deeming through the process

of hearings so far. We will be talking about it again this afternoon. Very briefly, it is the concept that the WCB will make payments to a worker based on wages that the WCB believes the worker to be capable of, whether or not the worker actually is earning those wages.

We are also assured by Mr. Sorbara that the wage-loss payment principle in Bill 162 is the same as that which has been adopted or has been recommended in the vast majority of other provinces in Canada, and of course, this is what leads us to the necessity to look at those provinces.

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As you may already know, each jurisdiction which brought in the wage-loss system did so on the understanding that it would better compensate injured workers for their wage loss. In each instance, most of the labour movement supported the concept in the belief that it truly would better compensate injured workers.

Certainly, at first reading of Bill 162, the impression one might get is that it would better compensate injured workers, but in each and every case it has been used by the WCB administrators to deem injured workers to have jobs which they do not actually have and leave the workers with no payments or greatly reduced payments and often turning to welfare.

What has happened in Saskatchewan? Saskatchewan was the province that broke into this system first; again, with the best of intentions. In 1973 and 1978, the government was told that it should produce a better system and in 1979 the act was amended so that workers who had a loss of wages due to injury would be guaranteed full compensation for that loss. The word that is used in the actual legislative wording is "ensure." That guarantee of wages was to be based on the board's estimation of the loss of earning capacity of the worker.

There have been two review committees since that legislation came into place, both of them highly critical of how that section of the act is being used to deem workers at wages they do not have. The review committee of 1986, for example, documents the disparity between the intention of the legislation and the implementation by the WCB. They made numerous recommendations to rectify the situation, and I do not want to go through all of those today, but they could be summarized in one paragraph from their brief, in their recommendations:

"The committee believes that this places the responsibility of the board back where it belongs. It is not the responsibility of the board to guess what the worker's earnings would be if only that worker could get a job. It is the board's responsibility to rehabilitate that worker and aid the worker to return to productive employment. Clearly, this new interpretation is based on that goal."

Despite the very strong recommendations from the review committee—very strong recommendations from that one and the one before—the situation has not changed in Saskatchewan. The legislation was not amended. It was left up to the board to implement those recommendations from the review committee and it did not do it.

We received a letter from the Saskatchewan Injured Workers' Association this fall when we wrote to find out what was happening in Saskatchewan. This is their answer:

"The 'deeming' aspect of the present system in Saskatchewan has been one of the most debated and controversial aspects of the new system. It has been a tool used by the board in Saskatchewan to get out of their responsibility of retraining, if necessary, and continued payments to injured workers. The board uses this deeming process on workers with long-term disabilities whom they wish not to retrain or to continue paying wage-loss benefits to..."

Here is an example of a letter from the board. It talks about a 57-year-old man, an electrician, who was blinded on the job. In a letter from the board, it states:

"Commencing August 1, 1988, your entitlement will be equal to \$450 per month, which has been calculated by taking your accident earnings from 1984 of \$2,500 per month, less those earnings which the board felt you were capable of as a counterman in a hardware store, arcade attendant or parkade attendant."

The deemed earnings from those jobs were \$1,800.33. They took 75 per cent of the figure and left this man with \$450; a blind man who does not have a job.

There is nothing in Bill 162 which will prevent that from happening here.

We know that you are also very interested in Quebec, and we have brought some people from Quebec here to speak to you today. We will turn to them now. Nicole is French-speaking. This will be in the French language. After we hear from Quebec, I will come back to review some of the other jurisdictions.

M. le Président : Bienvenue à Queen's Park.

Mme Godbout : Monsieur le Président, j'aimerais vous présenter deux personnes du Québec, deux témoins qui sont venus nous parler de la situation là-bas en ce qui concerne l'organisation des travailleurs accidentés.

M. Pierre Leyraud, qui est à ma gauche, est membre du conseil d'administration de l'UTAM, l'Union des Travailleurs Accidentés de Montréal, un organisme populaire de défense et de promotion des intérêts des accidentés du travail.

Depuis 1978, M. Leyraud fait partie du Comité d'action santé et sécurité de la CSN, la Confédération des syndicats nationaux, région de Montréal.

Il a aussi fait de la formation sur la Loi 42, qui est la loi au Québec sur les accidents du travail, qui a été mise en vigueur en août 1985. Il a aussi fait de la formation sur l'ancienne loi au Québec. Il a donc une connaissance théorique très bonne de la situation là-bas.

Il a aussi participé à la présentation et à la préparation du mémoire de la CSN à la commission parlementaire du Québec chargée d'entendre les interventions des groupes intéressés sur le projet de loi 42, qui a été depuis mis en vigueur au Québec.

A la gauche de M. Leyraud est M^e François Parizeau, qui est membre du Barreau du Québec depuis 1978. Depuis à peu près dix ans, M^e Parizeau représente, dans sa pratique privée, les travailleurs accidentés auprès de la Commission de la santé et de la sécurité du travail du Québec, qui est l'équivalent de la Commission des accidents du travail en Ontario.

Il a aussi une très bonne connaissance théorique et pratique de la loi là-bas. Je laisse la parole à M. Leyraud sur la situation au Québec.

M. Leyraud : Depuis plus de 50 ans, les accidentés du travail du Québec et de l'Ontario se sont vus assujettis à un régime d'indemnisation, en matière d'accident et de maladie du travail, fondé, dans un cas comme dans l'autre, sur les principes fondamentaux suivants :

D'abord, la reconnaissance de la responsabilité patronale en matière d'indemnisation des accidents du travail et, avec contrepartie, le retrait du droit de poursuite de ces mêmes employeurs par les victimes.

Deuxième principe : le droit, pour les victimes, de voir réparer les dommages causés par un accident du travail par des indemnités, prises à un même fonds d'indemnisation financé par les employeurs et administré par la commission. Indemnités qui étaient de deux types : sur une base temporaire, un remplacement du revenu du travailleur pendant la période où sa lésion l'empêchait de reprendre son travail; et, sur une base permanente, en proportion du degré de l'atteinte permanente à la personne et à sa capacité de travail ou de gain.

Quelles que soient les modifications qui ont été, par la suite, apportées à votre régime comme au nôtre, à la hausse ou à la baisse, ces deux principes ont toujours été à la base du régime de droits applicables aux accidentés du travail; et, pour cette raison, nous pensons que notre témoignage sur la situation des accidentés au Québec peut être de quelque utilité pour la présente commission parlementaire.

Tant en Ontario qu'au Québec, les plaintes et revendications des accidentés du travail ont surtout porté, au cours des dernières années, sur la façon dont ce régime a été appliqué par la Commission des accidents du travail, à qui le législateur a toujours laissé des pouvoirs discrétionnaires dangereusement étendus, compte tenu de son double rôle de juge et partie.

En effet, votre Commission des accidents du travail, comme la nôtre, agit comme compagnie d'assurance mutuelle auprès des employeurs cotisants — ses clients — et a pour tâche paradoxale de gérer ces fonds et de les distribuer à des réclamants qui ne sont pas ses cotisants.

Chaque réclamation qu'elle accorde à une victime prend donc un caractère de pénalité pour son client, l'employeur, et, dans ces conditions, il faudrait être bien naïf pour croire en sa neutralité.

Nous croyons que les accidentés du travail, chez vous comme chez nous, ont eu raison de se plaindre des injustices dont ils ou elles ont été victimes : en raison, d'une part, d'un retard de la législation à couvrir certains dommages; mais surtout à cause du parti pris de la commission en faveur de ses cotisants — parti pris qui a trop souvent conduit à utiliser ses pouvoirs discrétionnaires au détriment des victimes, et à se percevoir davantage comme gestionnaire du fonds d'indemnisation que comme organisme chargé de réparer, selon les principes de justice et d'équité, les dommages causés aux victimes.

Les employeurs de leur côté, en Ontario comme au Québec, trouvent que les accidents du travail, ça coûte cher. Oui, c'est vrai, ça coûte très cher — aux victimes d'abord, aux employeurs ensuite — et ça coûte cher d'abord et avant tout parce qu'il n'y a pas de souci, chez les employeurs, d'assurer des conditions de travail saines et sécuritaires.

Pourtant, à ce que nous sachions, ni en Ontario ni au Québec, nous n'avons vu les employeurs réclamer à grands cris auprès du législateur des mesures coercitives contre les employeurs négligents ou peu soucieux de la santé et de la sécurité de leurs employés, ni non plus une révision à la hausse des normes légales de sécurité au travail.

Ce serait pourtant la principale façon d'engendrer une diminution des coûts de la réparation. L'autre façon, la seule autre façon de réduire les coûts, serait de sabrer dans les droits des victimes.

C'est ce qui nous est arrivés au Québec en 1985. Et c'est ce que le patronat ontarien vous demande de faire, à vous, membres du parlement.

Les promesses : Le projet de loi 162, déposé devant vous, ressemble étrangement au projet de loi 42, que le gouvernement du Québec a adopté en 1985 malgré les protestations véhémentes de la majorité des travailleurs au Québec.

Les promesses qui entourent ce projet de loi sont de même nature que celles qui ont été faites au Québec. C'est pourquoi nous sommes ici : pour vous faire part de notre expérience malheureuse, mais néanmoins instructive.

Qu'attend-on de ces promesses? En Ontario comme au Québec, le projet de loi est présenté comme une façon de réaliser à la fois la réduction des coûts pour les employeurs et l'amélioration des bénéfices pour les victimes.

Un vrai tour de magie! Nous n'y croyons pas; vous non plus. Pourquoi continuer à le dire? On essaie alors autre chose. La réforme devrait permettre une meilleure redistribution des fonds entre les victimes. On laisse ici entendre que, sous l'actuel régime, les accidentés seraient surcompensés, parce que l'indemnité permanente qu'ils reçoivent serait supérieure à leur perte de gain.

N'est-ce pas alors une façon d'affirmer que l'accidenté ne devrait plus avoir droit à la réparation financière des dommages causés à son intégrité physique, quelle que soit sa perte de revenu?

D'autre part, si les cas de surcompensation existent, ils sont à ce point rares qu'on ne peut, de façon réaliste, prétendre récupérer là les sommes nécessaires pour garantir les droits des milliers de travailleurs sous-analysés.

On promet aussi aux travailleurs l'inscription de droits nouveaux réclamés depuis longtemps par les accidentés : par exemple, un droit à la réadaptation; un droit de retour au travail chez son employeur; un régime équitable d'indemnisation des dommages corporels permanents; une garantie de remplacement de la perte de revenu engendrée par l'accident; et une compensation équitable à l'âge de la retraite.

Cela a l'air tellement beau, qu'on se demande bien comment une personne sensée peut s'opposer à un tel projet.

Enfin, comme dernière promesse, à ceux et à celles qui s'inquiéteraient de la perte des rentes à vie, qu'on remplace par des montants forfaitaires dont la valeur est nettement moindre, on répond qu'il n'y a pas lieu de s'inquiéter, puisque cette diminution de bénéfices permanents sera largement compensée par l'attribution d'une indemnité correspondant à la perte de revenu consécutive à l'accident.

Jusque-là, on peut dire que le projet de loi 162 en Ontario et le projet de loi 42 au Québec ont engendré au moins le même discours publicitaire. Pour notre part, nous avons aussi eu droit à d'autres promesses relatives à la procédure d'évaluation médicale. Nous n'en parlerons pas ici, puisqu'il n'y a pas les pendants dans le projet de loi 162.

Une fois les promesses examinées, qu'en est-il de la réalité? Il me semble que si l'on veut examiner la réalité, il y a deux choses qu'il faut avoir à l'esprit.

Le texte de loi contient-il réellement toutes les dispositions garantissant les droits qu'on prétend reconnaître aux victimes? Deuxième point, comment ces dispositions seront-elles appliquées par la Commission chargée d'administrer et la loi et les fonds? Autrement dit, les accidentés seront-ils à l'abri d'interprétations fluctuant au gré des gouvernements et de la Commission?

Nous n'examinerons pas ici, de ce double point de vue, l'ensemble des dispositions prévues au projet de loi 162. Nous nous en tiendrons à quelques points qui nous semblent particulièrement importants, parce qu'ils constituent les fondements mêmes du nouveau régime et que, sur ces points-là, notre expérience avec les accidentés du travail au Québec est importante.

Premier point — qui, je le souligne, est un point important, puisque les similitudes sont assez claires : c'est le remplacement de la rente pour incapacité permanente par, d'une part, un montant forfaitaire aux dommages physiques, préjudices esthétiques, douleurs et perte de jouissance de la vie, et, d'autre part, par une indemnité de remplacement de revenu perdu à la suite de la lésion.

En ce qui concerne les forfaitaires, il n'est pas nécessaire d'être comptable pour se rendre compte que les montants forfaitaires prévus à votre loi et à la nôtre représentent des sommes ridicules, nettement inférieures aux rentes jusqu'ici garanties par la loi et les règlements, et ils sont une bien maigre compensation pour les dommages physiques et psychiques permanents causés par un accident ou une maladie du travail.

Au Québec, des équipes de spécialistes ont mis plus de deux ans à élaborer un barème d'évaluation des dommages corporels. Ce barème comporte 308 pages.

Lorsque le barème a été adopté par règlement, plus de 50 000 dossiers d'accidentés éligibles à ces forfaitaires étaient déjà accumulés et en attente d'évaluation.

Toujours au Québec, c'est le médecin traitant choisi par le travailleur qui fixe le pourcentage d'incapacité d'après le barème. Chez vous, c'est un médecin désigné par la Commission, ce qui est moins rassurant.

Nous avons aussi remarqué que le projet de loi 162 ne prévoit pas de recours au tribunal d'appel sur cette question. Devons-nous en conclure que le législateur est convaincu d'avance que les coûts engendrés par l'appel dépasseraient les sommes réclamables? Il aurait sans doute raison sur ce dernier point; mais il préférera aussi sans doute accorder ce droit d'appel justement réclamé par les travailleurs, plutôt que de reconnaître ce non-sens.

Ensuite, l'indemnité de remplacement du revenu : Notre loi 42 prévoit que tout accidenté jugé inapte, une fois sa lésion consolidée, à reprendre son

ancien emploi a droit de recevoir une indemnité de remplacement du revenu comblant la différence entre 90 pour cent de son revenu net retenu initial et le revenu net retenu de l'emploi que la Commission le juge apte à occuper une fois sa lésion consolidée. Cette indemnité lui est garantie par la loi jusqu'à ce que son nouveau revenu ait atteint son revenu initial indexé ou jusqu'à l'âge de la retraite.

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Sur cette question, les garanties offertes par la loi du Québec nous semblent nettement meilleures que celles qui sont inscrites au projet de loi 162. Pourquoi?

Au Québec le travailleur accidenté est assuré d'une indemnité temporaire, égale à 90 pour cent de son revenu, jusqu'à la consolidation de sa lésion; <consolidation> signifie guérison, ou alors stabilisation médicale sans aucune amélioration prévisible.

Cependant, dans le projet de loi 162, la garantie, c'est pendant un an ou un an et demi. Ce point-là nous paraît très important; et, d'ailleurs, c'est un point qui, dans un des avant-projets du projet de loi 42, avait été amené par le gouvernement du Québec et qui ensuite, face aux revendications des travailleurs, a été enlevé. Et aussi, on voit assez mal comment, dans la pratique, on pourrait évaluer un accidenté sans attendre qu'il y ait soit guérison, soit qu'il ait atteint un niveau de stabilité médicale. Et, entre autres, on voit mal comment on pourrait se pencher sur un problème de réadaptation sans qu'il y ait consolidation.

Donc, au Québec, le travailleur reçoit 90 pour cent de son revenu jusqu'à la consolidation. Ensuite, il peut le recevoir pendant une durée maximale de douze mois, s'il n'a pas trouvé d'emploi convenable — et non pendant six mois — ni avec l'obligation d'être encadré par un programme de réadaptation de la Commission.

Ensuite, au Québec, il n'est pas nécessaire d'avoir un pourcentage d'incapacité physique, ni d'avoir une indemnité temporaire de douze mois pour y avoir droit, mais seulement de devoir occuper un emploi moins rémunérateur en raison de sa lésion.

Troisième point : l'indemnité réduite est garantie par la loi au Québec jusqu'à 65 ans, ou jusqu'à ce que l'employé tire un revenu d'emploi égal à son salaire initial revalorisé, et non pendant une durée indéterminée fixée selon le bon vouloir de la Commission.

Donc, ce que je viens de présenter, c'est, en quelque sorte, les différences qui existent entre le projet de loi 162 et ce que l'on vit au Québec.

Mais, malgré ces différences extrêmement importantes pour nous, les deux textes comportent un vice commun fondamental : la différence de salaire versée au travailleur ne tient pas compte du nouveau salaire réel qu'il gagne ou ne gagne pas, mais du salaire d'un emploi hypothétique ou potentiel que la Commission le juge apte à occuper.

Les conséquences de ces dispositions sont extrêmement pénalisantes pour les victimes et très rentables pour le fonds d'indemnisation. Notre expérience au Québec nous permet d'affirmer que cette disposition-là amène une grande partie des accidentés à ne pas pouvoir se reclasser dans la catégorie d'emplois dits <convenables> déterminés par la Commission.

Les salaires qu'ils obtiennent à leur nouveau travail sont nettement inférieurs à ceux qui ont été présumés pour cet emploi convenable. Il y a donc là une perte de gain réelle et permanente pour la victime.

Deuxième aspect : même lorsqu'un travailleur trouve et occupe par chance cet emploi dit convenable pendant un certain temps, sa capacité et ses chances de reclassement suite à une mise à pied sont beaucoup moindres que celles d'un travailleur en santé. Sa perte de revenu est donc, à long terme, considérable, parce qu'il doit faire face à de plus longues périodes de chômage.

Troisième point : s'il ne trouve aucun emploi approprié à ses capacités résiduelles, son indemnité de revenu réduite, établie sur la base du salaire d'un travail hypothétique, le conduira tout droit à l'assistance sociale. C'est, bien sûr, autant d'épargné pour le fonds des employeurs.

Quatrième point, qui nous paraît d'ailleurs un des points les plus importants : ce supposé droit à une indemnité réduite de remplacement de revenu exclut, au départ, une grande partie des travailleurs et surtout des travailleuses, tous ceux et celles qui travaillaient au salaire minimum et jusqu'à 10 pour cent au-dessus au moment de leur accident.

En effet, si on soustrait leur nouveau salaire minimum de leur ancien salaire minimum, il n'y aura pas de différence à payer. Cela représente une économie importante pour le patronat, mais surtout une grave injustice pour ces victimes.

C'est aussi un recul important par rapport à l'ancien régime, parce qu'on ne tient plus compte de la réelle perte de capacité de travail de ces personnes — plus susceptibles que d'autres d'être en chômage — comme on le faisait dans l'attribution d'une rente à vie, basée non seulement sur la perte de capacité physique, mais aussi sur la perte de capacité de gain — article 45 de la loi de l'Ontario.

Un tel régime d'indemnisation entraîne non seulement l'appauvrissement progressif des victimes, mais il a pour effet certain de reporter sur d'autres régimes publics — aide sociale, régime des rentes, assurance chômage, régimes publics financés en partie par les travailleurs et travailleuses — les coûts qui devraient être assumés par le patronat.

Même si nous ne disposons pas encore aujourd'hui de statistiques officielles sur cette question, notre expérience quotidienne auprès des victimes du travail nous oblige à constater qu'un nombre de plus en plus grand d'accidentés du travail prennent le chemin de l'aide sociale, pendant que la présidente directrice générale de la Commission de la santé et de la sécurité du travail du Québec se vante de réussir enfin à réduire son déficit.

M^e Parizeau, à la fin de l'exposé, pourra donner des exemples concrets de ce que je viens de signifier.

Est-ce là l'objectif recherché? Peut-être bien; mais ça ne ressemble guère à ce qu'on nous avait promis. Les députés qui, de bonne foi — il y en avait peut-être — auraient voté pour l'adoption de la loi 42 au Québec en pensant assurer une plus grande justice aux victimes se rendent de plus en plus compte aujourd'hui, au nombre toujours croissant d'accidentés qui les assaillent dans leurs bureaux de comté et qu'ils envoient chercher de l'aide auprès de notre organisation, qu'au moment de l'adoption du projet de loi 42 au Québec, quelque chose a dû leur échapper.

Le droit à la réadaptation : depuis de nombreuses années, les accidentés du travail revendiquaient le droit à la réadaptation. Bien sûr, la loi reconnaissait déjà à la Commission des pouvoirs discrétionnaires de réadaptation, qui, depuis 1979, étaient transformés en obligations pour la Commission d'assurer certaines mesures de réadaptation qu'elle devait faire adopter par règlement. Mais le droit à la réadaptation pour la victime n'était pas inscrit comme tel dans la loi, et, en conséquence, le droit d'en appeler des décisions de la Commission sur ces questions était limité à la révision interne.

Cependant, au fil des ans, certains acquis avaient été enregistrés, des critères d'admissibilité élaborés, des programmes définis. Comme programmes, par exemple, il y avait : recherche d'emploi, formation, stabilisation du revenu, programme à incidence financière — d'ailleurs, fortement contesté par les employeurs.

Le projet de loi 42 devait régulariser la situation; le droit à la réadaptation allait enfin être reconnu.

C'est vrai. L'article 145 de notre loi reconnaît enfin ce droit. Mais, du même coup, il fixe des critères d'admissibilité beaucoup plus restrictifs qu'auparavant; pas aussi restrictifs, cependant, que ceux qui sont inscrits au projet de loi 162.

En effet, malgré notre expérience dans l'interprétation des législations ambiguës en matière d'accidents du travail, nous avons dû passer à travers neuf avant-projets de loi 42 avant d'en arriver au véritable avant-projet.

Donc, nous avons aussi une certaine expérience dans l'interprétation des législations.

Nous sommes forcés d'admettre que nous avons eu bien du mal à nous y retrouver dans ce chapitre du projet de loi 162. Ce labyrinthe est impressionnant; mais, contrairement à la plupart des labyrinthes, ce n'est pas la porte de sortie qui est difficile à trouver, mais c'est la porte d'entrée. On comprend alors mieux pourquoi le législateur a cru bon d'obliger la Commission à aller chercher la victime après 45 jours, puis après six mois, puis enfin après un délai raisonnable, pour lui offrir des services qu'elle risque de ne pas trouver elle-même au moment où elle en a besoin.

Les délais d'entrée en réadaptation inscrits au projet de loi 162, de même que la durée limitée des programmes donnant droit à l'indemnité complémentaire, risquent de faire de la réadaptation, non pas un moyen de réparer les dommages subis par les victimes en leur garantissant une meilleure sécurité d'emploi et de revenu, mais plutôt un système de contraintes visant à réduire l'accessibilité, et donc les coûts liés à ces services, et donnant lieu inévitablement à un imbroglio administratif inextricable.

Quant aux bénéfices prévus pour les accidentés du travail âgés qui ne sont plus aptes à exercer leur emploi, nous tenons à souligner que nous ne considérons pas comme un luxe le fait que la loi 42 leur garantisse 90 pour cent de leur revenu jusqu'à 65 ans, et de façon décroissante jusqu'à 68 ans.

En résumé, ni le projet de loi 162, ni la loi 42 ne donnent aux accidentés un droit réel à la réadaptation. Aucune garantie ne leur est donnée par la loi qu'ils retrouveront la sécurité du revenu que leur accident a compromise.

La liste est cependant longue, dans le projet de loi 162, des restrictions à leurs droits et des pouvoirs discrétionnaires de la Commission, en termes de délai, de durée, de choix de programmes ou de bénéficiaires.

Nous croyons que celui qui veut savoir à qui profite la loi n'a qu'à bien regarder comment y sont répartis les droits, les pouvoirs, les obligations et les garanties.

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Les droits nouveaux : le droit de retour au travail. Revendiqué depuis longtemps par les accidentés du Québec, ce droit est apparu pour la première fois dans notre législation avec le projet de loi 42. Ce droit permet au travailleur d'exiger de son employeur le retour à son emploi ou à un emploi équivalent, ou l'accès prioritaire à un travail convenable dans son entreprise, si ce travailleur ne peut plus effectuer le même travail suite à sa lésion.

Ce droit est applicable pendant deux ans si l'entreprise compte plus de 20 travailleurs et pendant un an si elle compte 20 travailleurs ou moins. Des dispositions particulières régissent ce droit pour les travailleurs de la construction.

Ce droit nous apparaît comme fondamental. Il vise à contrer l'attitude cavalière d'un grand nombre d'employeurs, qui ont vite fait de se débarrasser d'un travailleur victime d'accident dans leur entreprise.

Dans les faits, nous constatons que l'inscription de ce droit dans la loi protège essentiellement les travailleurs qui ont subi des accidents mineurs — laissant peu ou pas de séquelles permanentes à la suite d'un arrêt de travail de courte durée. Ces travailleurs sont quand même nombreux. Même s'ils n'étaient pas les plus menacés sous l'ancien régime, il n'en reste pas moins qu'ils sont maintenant mieux protégés.

Ceux qui ont été le plus grièvement blessés et absents du travail pour une plus longue durée ne sont aucunement protégés par ces dispositions.

Quant à ceux dont les séquelles permanentes empêchent le retour au même travail, les dispositions de loi enjoignant les employeurs de leur offrir le premier travail convenable disponible sont d'un effet à peu près nul; à moins que l'accidenté ne jouisse du soutien d'un syndicat fort et bien organisé, capable d'exercer une surveillance de tous les instants sur l'employeur.

Chez les non-syndiqués, là où l'observation de cet article de loi par l'employeur est laissé au seul contrôle de la Commission, ce droit s'avère de façon générale complètement inopérant.

En résumé, ce nouveau droit, en raison même des restrictions qui l'accompagnent et qui concernent les délais d'application, la taille de l'entreprise et le degré du handicap permanent, n'a encore qu'une portée bien limitée et ne justifie en rien la publicité trompeuse qui a entouré son introduction dans la loi.

Le droit d'appel : en ce qui concerne le droit d'appel, je serai assez bref, pour simplement souligner qu'il nous paraît important que sur chaque droit inscrit dans une loi, il est souhaitable qu'il y ait en même temps un droit d'appel.

Dans votre projet de loi 162, ce qui nous a surpris, c'est que sur deux points qui nous paraissent majeurs — sur l'indemnité forfaitaire, d'une part, et sur le droit de retour au travail, d'autre part — il n'y a pas de droit d'appel prévu. On nous a dit que le ministre allait élaborer quelque chose de plus favorable et nous nous en réjouissons.

En conclusion, le régime d'indemnisation que vous proposez avec le projet de loi 162 ressemble trop au nôtre, la loi 42, pour que vous ne vous heurtiez pas, si vous l'adoptez, aux mêmes insatisfactions. Nous souhaitons mieux que cela aux accidentés de l'Ontario.

Et nous revendiquons avec eux, et pour eux, le droit pour l'accidenté d'être traité et évalué par le médecin de son choix; et le respect, par la Commission, de l'opinion et des conclusions de ce dernier.

Nous revendiquons aussi la sécurité d'emploi ou la pleine compensation suite à un accident, le droit à une réelle réadaptation, axée sur les besoins des victimes et non sur l'obsession de la réduction des coûts imputés aux employeurs.

Nous revendiquons aussi le maintien des rentes à vie, seule garantie d'un minimum de sécurité financière, l'inscription dans la loi des droits des victimes, et la diminution correspondante des pouvoirs discrétionnaires de la Commission.

Enfin, un droit d'appel de toutes les décisions rendues par la Commission devant un tribunal d'appel extérieur indépendant, et des délais raisonnables d'audition.

Nous vous remercions de l'attention que vous avez portée à notre témoignage. Il nous fera plaisir de répondre à vos questions.

Me Parizeau : J'aimerais, dans un deuxième temps, ajouter quelques petits points.

J'aimerais juste revenir sur le contexte juridique dans lequel on se trouve en matière d'accidents du travail. C'est un contexte de responsabilité civile, c'est-à-dire qu'on vise à indemniser les dommages, en échange du droit de poursuite, c'est-à-dire qu'on a dit aux accidentés : <On va vous enlever votre droit de poursuite ou civil, et on va vous donner un régime d'indemnisation.>

Donc, on est dans un domaine où on vise à indemniser le dommage. Quel est le dommage face à un accident quelconque dans notre société? Dans un premier temps, il y a tout le temps un dommage temporaire, c'est-à-dire la période de temps nécessaire pour apporter des traitements et pour guérir une personne. On appelle ça <incapacité totale temporaire>.

Dans un deuxième temps, on a l'incapacité permanente. Dans le projet de loi, on ne semble pas faire de distinction à ce niveau-là. Ce que je peux reprocher, sur une base théorique et pratique, c'est que c'est un peu le droit au traitement qu'on se trouve à viser à travers une annulation de la distinction entre l'incapacité totale temporaire et l'incapacité permanente.

Au niveau de l'incapacité permanente, il s'agit de vérifier si, oui ou non, le régime déposé, que ce soit votre loi ou la loi qui nous régit au Québec, amène une compensation pleine et entière des dommages causés à l'accidenté. Et, dans ce sens-là, j'aimerais quand même qu'on souligne que,

dans le cadre de ce régime-là, on a déjà demandé aux accidentés de faire certaines concessions.

La première concession, c'est de dire : <Nous allons fixer un maximum assurable.> Si un accidenté fait 50 000 \$ par année — et ça existe, je suis sûr que vous en avez dans votre province; à tout le moins, nous autres, on en a au Québec — cet individu-là ne sera pas compensé sur une base de salaire de 50 000 \$. On va dire : <On ne tiendra pas compte du fait que tu fais 50 000 \$. On fixe un maximum assurable.>

Chez nous, il est présentement de 36 500 \$. Déjà, un travailleur qui est en haut de cette norme-là perd au niveau du système d'indemnisation.

La deuxième perte est au niveau du calcul, c'est-à-dire qu'on va dire : <On ne va pas te compenser sur la base de 100 pour cent de ta perte financière; on va te compenser sur une base de 90 pour cent.> C'est déjà une deuxième concession qu'on demande de faire aux accidentés.

Dans le cadre du contexte d'un paiement d'IRR, soit d'indemnité de remplacement de revenu, et de paiement d'un montant forfaitaire, on assiste à une troisième concession. Dans notre loi, le montant forfaitaire maximum, pour un accidenté de 18 ans qui a une perte et des séquelles permanentes de 100 pour cent, est de 50 000 \$.

Je vais juste prendre un petit exemple. Quelqu'un qui va perdre une jambe à mi-cuisse va se voir reconnaître 50 pour cent d'incapacité.

Si l'individu a 30 ans, ce 50 pour cent va vouloir dire pour lui un montant de 20 000 \$ — je n'ai pas le montant exact, mais je pense que c'est 20 350 \$, quelque chose comme ça.

On va ajouter à ça un pourcentage pour les douleurs, perte de jouissance de la vie, qui, dans son cas à lui, va être un 20 pour cent additionnel, ce qui va représenter un peu moins de 8 000 \$.

Je fais juste mettre ça en relief avec le droit civil ordinaire. Si quelqu'un se fait blesser et perd une jambe, au niveau du droit civil, il va être compensé pour la perte de capacité de travail. Je vais y revenir tout à l'heure : c'est quoi une perte de capacité de travail?

Il va aussi être compensé pour les pertes financières, pour la perte d'intégrité physique et pour les douleurs, souffrances. Juste au chapitre des douleurs, souffrances, depuis la trilogie de la Cour suprême — les trois jugements de la Cour suprême qui sont sortis dans les années 70 — les montants pour douleurs, souffrances, à l'époque ont été évalués à un montant maximum de 100 000 \$. Ça, c'est pour les accidents majeurs. Quelqu'un qui perd une moitié de cuisse, je pense qu'on peut dire que c'est majeur.

À l'heure actuelle, le montant de 100 000 \$, par suite des jugements de la Cour d'appel, est maintenant rendu à 150 000 \$.

Alors, juste pour les douleurs — on ne parle même pas de la perte d'intégrité physique — on parle juste des douleurs, perte de jouissance de la vie, quelqu'un qui, au Québec, poursuit en vertu du droit civil va pouvoir obtenir 150 000 \$.

En vertu du système d'indemnisation des accidents de travail, cette même personne-là, pour les douleurs, obtiendrait 8 000 \$, et, avec la perte

d'intégrité physique, n'obtiendrait qu'une trentaine de milliers de dollars. Il s'agit, face à ça, de se demander : <Est-ce que, oui ou non, on donne une compensation équitable à quelqu'un qui a eu un accident?> Je peux me permettre d'en douter.

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Je peux vous dire que ça fait des années qu'on parle — parce qu'au niveau des accidents de travail, la loi est relativement jeune, 1985; au niveau des accidents d'automobile, qui est un régime à peu près similaire, la loi date de 1977 — ça fait approximativement dix ans qu'on parle de hausser le maximum, qui est au même montant. Cela fait dix ans que le montant n'a pas changé.

J'aimerais aborder maintenant la question de la perte de capacité de travail et la notion d'indemnité de remplacement de revenu réduite, IRR réduite.

M. Leyraud vous a parlé de la perte de capacité en regard des aléas du milieu de travail; c'est-à-dire qu'un individu qui est blessé sérieusement et qui est mis à pied dans le cadre d'un problème économique de son usine va avoir plus de difficulté à se trouver un nouvel emploi. Dans ce cadre-là, on peut certainement parler d'une perte de capacité de travail.

Est-ce que c'est indemnisé? Non. Ni dans votre régime, ni dans le nôtre, on ne tient compte du fait que cet individu-là risque d'être mis à pied éventuellement, et, compte tenu de son déficit, va se retrouver dans une situation beaucoup plus difficile qu'un travailleur ordinaire, qui, lui, n'aurait pas été accidenté.

Un autre point — qui n'a pas été soulevé par M. Leyraud, et que moi j'aimerais soulever, et qu'on retrouve dans tous les jugements des cours supérieures, des Cours d'appels, des Cours suprêmes — c'est que quand on va évaluer la perte de capacité de travail, on va l'évaluer comment? On va l'évaluer en fonction non seulement de la perte financière actuelle, c'est-à-dire — le système qui est proposé, et que nous avons, calcule la perte financière en disant : au moment de l'accident, l'accidenté faisait tel salaire; on va avoir à compenser l'accidenté sur la base de ce salaire-là.

En pratique, la question qu'on doit se poser, c'est : est-ce que ce salarié-là avait des possibilités d'avancement? Et en ne se posant pas la question, on se trouve à dire : <Non, les travailleurs accidentés n'ont pas de possibilités d'avancement.>

Moi, dans ma pratique, au niveau des antécédents de travail, on voit, régulièrement et fréquemment, un travailleur manuel qui peut faire de 30 000 \$ à 45 000 \$. On fait ses antécédents de travail, et on s'aperçoit qu'il ne faisait pas de 30 000 \$ à 45 000 \$ quand il avait 20 ans, 30 ans ou 40 ans. Il y a des travailleurs manuels qui vont végéter au salaire minimum et qui, à un moment donné, vont se retrouver chez un employeur qui donne de bons salaires.

Un journalier peut être payé au salaire minimum; si on va dans l'industrie du pétrole ou dans les chemins de fer, son salaire peut passer de 15,00 \$ à 17,00 \$ de l'heure.

Même à l'intérieur d'une même usine, un travailleur manuel qui travaille, par exemple, dans le département d'entreposage peut avoir un poste léger — et, normalement, dans ce cadre-là, il y a tout le temps des

classifications en regard des responsabilités à l'intérieur d'un même département; les taux horaires en fonction de ces classifications-là peuvent varier facilement de 3,00 \$ à 6,00 \$ de l'heure.

Dans le tabac, dans un même service des expéditions d'un syndicat que je représente, je peux vous dire que les différences de classification varient approximativement, entre la première et la dernière, de 6,00 \$ de l'heure. Si on dit qu'un travailleur manuel n'est plus en mesure de faire un travail forçant, on le limite à un travail subalterne; et ça veut dire que quand on calcule l'IRR, on ne tient absolument pas compte des possibilités d'avancement.

Or, quand la cour supérieure, la Cour d'appel ou la Cour suprême va évaluer la perte de capacité de travail, elle va se demander : cet individu-là, à travers son plan de carrière — je m'excuse d'utiliser un terme qui est utilisé plus pour les professionnels que pour les travailleurs manuels — elle va se poser la question, afin d'évaluer la perte de capacité de travail : dans quel milieu est-il? quelles sont ses possibilités d'avancement? Et je pense que c'est encore une autre concession majeure qui est faite dans le cadre du principe même de la question de l'IRR.

C'est pour ça que, personnellement, je ne peux pas être d'accord avec la notion d'IRR réduite. Je pense qu'en fonction de l'évaluation d'un dommage, on doit voir à compenser la perte de capacité de travail et, quand on évalue la perte de capacité de travail, on doit tenir compte de tous ces facteurs-là.

Au niveau des évaluations irréalistes, je peux juste vous nommer un cas. Je pourrais vous en donner un autre, mais je vous en donnerai un qui m'apparaît tout à fait farfelu, mais qui est quand même présentement en appel.

Il s'agit d'un individu de 53 ans, qui a eu une cervicalgie très sévère, qui est reconnu présentement invalide par la Régie des rentes — les critères d'invalidité de la Régie des rentes, c'est de ne pas pouvoir occuper quelque emploi rémunérateur que ce soit — et, ce faisant, qui a été reconnu invalide par les médecins de la Régie des rentes. La Régie de l'assurance automobile lui a retiré son permis de conduire parce qu'elle jugeait, en fonction de ses médecins, que l'individu n'était pas en mesure de conduire de façon sécuritaire une voiture, compte tenu du raidissement de son cou.

C'est un individu de 53 ans. On a eu une décision disant que cet individu-là pouvait faire un travail général d'usine à temps partiel à 53 ans. C'est, quant à moi, une évaluation totalement irréaliste, et ce, d'autant plus que les médecins traitants, les médecins de la Régie des rentes du Québec, qui — je peux vous le dire, parce que je m'occupe non seulement de la santé et de la sécurité au travail, mais aussi de la Régie des rentes, parce que c'est un domaine connexe — a des critères excessivement sévères; et, en fonction de l'ancienne loi, c'est les mêmes juges, c'est-à-dire la Commission des affaires sociales, qui ont appliqué les deux lois. Et je peux vous dire qu'en pratique, les critères pour déclarer quelqu'un invalide, que ce soit en vertu de l'ancienne Loi des accidents du travail ou en fonction de la Régie des rentes, sont approximativement les mêmes.

Alors, ce faisant, je ne peux que conclure, comme M. Leyraud l'a fait, que la notion d'IRR, basée sur une évaluation d'un emploi prévisible, est un sujet qui risque de soulever énormément de débats; d'autant plus que les lois prévoient des mécanismes de réévaluation, soit annuels, soit bi-annuels, soit tri-annuels, dépendant des lois en question et dépendant des périodes. Le cas que je vous ai cité, c'est un cas de réévaluation qui avait déjà été payé, et on n'est plus d'accord maintenant avec la décision qu'on avait prise avant :

il est capable de faire un travail à temps partiel. Je vous remercie, messieurs.

Ms. Godbout: Mr. Chairman, before the committee starts with questions to the witnesses, I would just like to clarify one point that perhaps was not picked up in translation. When Mr. Parizeau started, he mentioned the right to sue and perhaps that was translated as appeal rights. But the principle that he has been referring to throughout his presentation is that in 1915 injured workers lost their right to sue and, in exchange, were given a no-fault compensation scheme which in 1989 everybody agrees, I think, should be a fair scheme and not one that is a poor second cousin to the fair compensation that is given to victims in our courts. That was the principle underlying his presentation.

Perhaps the committee members have questions for the witnesses at this point.

Mr. Chairman: Yes. Some members have indicated an interest.

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Mrs. Stoner: I really appreciate your coming and I am particularly interested in the comparison to the Quebec model. I guess I have three questions in response to what I have heard. First, I note that there was a discrepancy between Ms. Godbout's statement about the rush to deal with Bill 162 and then her statement about the very long debate on workers' compensation.

Leaving that and going to Mr. Leyraud and his comments, he talked about the right to rehabilitation and the right to work in Quebec's legislation and stated that it was more limited than before in both instances, I believe.

When we were in Ottawa, we heard from the Public Service Alliance of Canada. They told us that Quebec's legislation was in fact, or should be, the model for Ontario's. They said they had supported that legislation during the preliminary discussions of it and after it had been implemented and they continued to support it and held it up to us as a model for what we should in fact be doing in Ontario. Can you comment on that?

M. Leyraud : Au Québec, nous avons donc gagné le droit à la réadaptation avec le projet de loi 42. Immédiatement sont venues les restrictions. Cela veut dire qu'au Québec, pour avoir droit à la réadaptation, il faut que l'accidenté ait un pourcentage d'incapacité permanente; ce qui veut dire que les personnes qui ont des limitations fonctionnelles — qui, par exemple, ne peuvent pas rester debout plus de dix minutes ou qui ne peuvent pas faire n'importe quel travail pendant un certain temps, mais qui n'ont pas d'incapacité permanente chiffrée — n'ont pas droit à la réadaptation.

Cela veut dire que le droit a été inscrit, mais, en même temps, des restrictions sont venu limiter considérablement l'application de ce droit, l'accessibilité à la réadaptation.

Mrs. Stoner: Would you say those limits would be seen in an assessment if there were, as our bill is drafted, a required assessment of whether rehabilitation would be appropriate?

Me Parizeau : Ce que moi je comprends de la question du droit à la réadaptation, c'est qu'on a formalisé ce droit-là. En le formalisant, on a introduit une multitude de possibilités de contestation; c'est dans ce cadre-là qu'il y a un aspect restreint.

Si je peux me permettre de rentrer dans les dispositions légales, l'article 145 de notre loi parle d'atteinte permanente. La Commission de la santé et de la sécurité du travail du Québec interprète le mot "atteinte permanente" comme étant un déficit anatomo-physiologique.

Dans certains cas, notamment au niveau des gestes répétitifs, vous avez des gens qui peuvent avoir des lésions musculo-squelettiques, qui font par exemple qu'ils vont avoir développé un tunnel carpien et qui ne peuvent plus — on peut prendre l'exemple des dactylographes. Le tunnel carpien, c'est une lésion au niveau des poignets qui va amener un certain engourdissement. C'est une lésion, comme telle, qui apparaît à l'activité physique. Si la personne est au repos, elle n'aura pas ces engourdissements-là, et ça va disparaître. Si elle revient au travail, à ce moment-là les engourdissements reviennent et il y a des restrictions fonctionnelles.

La CSST dit : <Les restrictions fonctionnelles ne sont pas suffisantes pour avoir le droit à la réadaptation. Il faut avoir un D.A.P.> Dans certains cas, il y a des médecins qui disent : <Moi, je ne donne pas de D.A.P., parce que je vois la cliente au repos et je ne vois pas de problème. Il n'y a pas d'engourdissement; ça fait six mois qu'elle ne travaille pas, donc il n'y a pas de D.A.P.> Mais cette personne-là, tous les médecins vont lui dire : <Tu ne peux pas retourner à ton travail.> Alors, ça a créé des freins à la réadaptation par rapport à ce qui existait avant, où on ne prenait que finalement la notion de—

Mrs. Stoner: Okay, I appreciate your clarification on that. My next point is to you, Mr. Parizeau, on the comparison that you made with the legal responses. Ms. Godbout clarified the translation on that, but what you seemed to be saying was that Quebec courts were giving substantially more money on a claim for accident victims, right?

Ms. Godbout: The Supreme Court of Canada judgements as well.

Mrs. Stoner: Okay. My question is on the Quebec courts. First of all, I am not a lawyer. I wonder if those lump sum decisions that the Quebec court is giving do take into consideration the loss of income. Second, do you suggest that in fact you would prefer to return to the court system?

Me Parizeau : Bon, je vais prendre le dernier aspect de votre question. Non. Un des avantages du système actuel, c'est que l'accidenté n'a pas à démontrer la faute de l'employeur pour être en mesure d'obtenir une indemnisation. C'est effectivement un gain que les accidentés ont obtenu; gain en échange de l'absence—

Mrs. Stoner: You see it as an improvement?

Mr. Parizeau: It is an improvement.

Sûrement; sauf qu'il faut comprendre — et là, je retourne à la deuxième partie de votre question. Je vous ai expliqué que la façon dont on va évaluer un dommage, ça va être au niveau de la perte d'intégrité physique, de la perte de capacité de travail, que je vous ai expliquée, et de la perte de jouissance de la vie. Ces trois chefs d'indemnisation vont être examinés cas par cas.

Alors, quand j'ai parlé de 150 000 \$ pour perte de jouissance, c'est le maximum qui est accordé. Il y a évidemment des montants qui sont accordés en deçà de ça, mais ça ne tient pas compte de la perte de capacité de travail et de la perte de salaire. Cela, c'est compris dans la carte dans le cadre de la

perte de capacité de travail : c'est quoi, la perte financière, et c'est quoi, la perte—

Mrs. Stoner: In addition?

Mr. Parizeau: In addition.

Ce qui fait que si je prends la trilogie de la Cour suprême, les montants qui ont été accordés dans ces cas-là, ça a été deux et trois millions de dollars — ça, ça date des années 70 — et les montants qui sont accordés maintenant dans des cas semblables, les cas où les gens se retrouvent paraplégiques ou quadraplégiques, ça frise facilement les quatre millions.

Et là, on évalue les possibilités d'avancement. C'est évident que si on prend un travailleur qui n'avait strictement aucune possibilité d'avancement parce qu'il était rendu à sa pleine capacité, ce que je vous ai dit tombe un peu à l'eau.

Sauf que, quand on regarde un régime général et qu'on se rend compte que le régime en soi n'examine même pas cette partie-là, on est en droit de se poser la question : est-ce que, oui ou non, la compensation est juste?

Si on prend ça dans le cadre d'une analyse globale, on a gagné le fait qu'on n'est plus obligé de démontrer la faute, sauf qu'on nous a demandé, comme compensation, de ne plus poursuivre. On nous a demandé de mettre un maximum assurable, c'est-à-dire de dire : <Ecoutez, votre salaire, vous ne serez pas indemnisé en haut de 36 500 \$. Même si vous faisiez 50 000 \$, on n'en tiendra pas compte.

On a pris 90 pour cent de ça, et là, on va encore en dessous par rapport à avant, et on dit : <On ne tiendra pas compte de vos possibilités d'avancement. On ne tiendra pas compte des aléas reliés à votre condition physique.

Et c'est dans ce sens-là que je dis que, à un moment donné, il va falloir arrêter les concessions que les accidentés vont devoir faire, parce que là, on arrive à un constat où on dit que ce n'est absolument plus juste.

Et certains accidentés vont dire : <Moi, je préférerais poursuivre, puis démontrer la faute, parce que je n'y trouve plus mon compte du tout.>

Mrs. Stoner: Thank you.

Mr. Wildman: First, I would like to say thank you very much to the gentlemen from Montreal for coming this distance to assist us.

I would like to follow up on two matters. One follows from the questions Mrs. Stoner raised. First, as a background to my question, in this bill it should be clear that there is no right to rehabilitation. There is a right to an assessment and that is what is presented in the bill. My first question is, with regard to rehabilitation in Quebec, is there more than just the right to an assessment, and if there is, what restrictions have been placed on rehabilitation since the law was passed that provided the right to rehabilitation?

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Me Parizeau : Au niveau du droit à la réadaptation : si on regarde

les mesures prises entre l'ancienne loi et la nouvelle, on se rend compte que les mesures ne sont pas réellement différentes. Ce qui a changé dans la loi, c'est que, antérieurement, on avait une disposition qui disait que la CSST pourrait prendre les mesures nécessaires à la réadaptation de l'accidenté.

C'était excessivement général et très discrétionnaire. On a mis, dans la nouvelle loi, certains droits, comme le droit à la formation, le droit à la recherche d'emploi, le droit à l'aide à domicile, etc.

On a formalisé, on a concrétisé ces droits-là. En termes pratiques, je ne vois pas réellement de différence pour l'accidenté. Si je prends un accidenté avant, sous l'ancienne loi, puis, sous la nouvelle loi, il va obtenir sensiblement les mêmes choses. Il n'y a pas de nouveaux programmes.

J'aimerais passer un commentaire à côté de votre question. Dans le cadre d'une compensation et dans le cadre d'une gestion saine, je pense que la chose essentielle, au niveau d'une loi d'indemnisation comme celle-là — Il y a trois points : l'indemnisation, la prévention, puis la réadaptation.

Si on s'attache à la question de la réadaptation, si un individu subit un dommage, on doit viser à compenser, à corriger ce dommage-là. On doit essayer de replacer l'accidenté dans une situation où il ne sentira pas les conséquences de cet accident-là.

Evidemment, le paiement d'une somme d'argent est toujours nécessaire, mais le premier but, c'est d'essayer de corriger les conséquences sociales et d'emploi. Dans ce cadre-là, la CSST au Québec a encore des pas à faire pour fournir des services de réadaptation plus adaptés aux besoins.

Mr. Wildman: The other question I have relates to testimony that was given before the committee when we were in Ottawa by the Canadian Paperworkers Union. The paperworkers were very critical of Bill 162, but they did point to the Quebec legislation regarding reinstatement and said that while they had some criticisms of the Quebec legislation, they felt it was far superior to what is proposed in Bill 162 for Ontario. Could you comment on the right to reinstatement for an injured worker under the Quebec legislation?

Me Parizeau : Je pense que c'est un droit excessivement important. Dans ce sens-là, je suis en accord avec le syndicat du papier, sauf qu'il faut voir l'application de ce droit-là — Dans les endroits qui étaient déjà syndiqués, on peut dire que ça n'a pas eu d'impact réel, mais, à mon sens, c'est quand même un droit fondamental.

C'est effectivement un gain. Si on veut parler de plus et de moins, c'est évident que c'est un plus. Je ne veux pas dire que le régime au Québec est pourri jusqu'à l'os; j'ai juste fait état de certaines critiques au niveau du processus, mais c'est évident qu'on a, à travers le temps, obtenu certains gains.

Si je me place il y a vingt ans, la réadaptation était totalement inexistante au Québec. A partir de 1976-1977, on a commencé à avoir des mesures; discrétionnaires, mais on a commencé à avoir des mesures. Il y a effectivement des gains.

Je ne sais pas si ça répond à votre question. Sur une base théorique, je peux juste vous dire qu'effectivement, c'est important; sauf que, comme M. Leyraud l'a mentionné, c'est que, si l'accident est grave, le droit de retour au travail est, dans le cadre d'une usine de plus de 20 employés, de deux ans à partir de l'accident.

Alors, si vous avez eu une opération majeure et qui a nécessité certaines révisions chirurgicales, vous arrivez à un processus où vous êtes en traitement pendant un an, un an et demi ou deux ans; et votre droit de retour au travail est inexistant, parce que, pendant le temps où vous étiez en traitement, vous ne pouviez pas demander d'être réintégré : vous n'étiez pas capable de travailler.

Alors, chez les blessés graves, ce droit-là se trouve un peu à disparaître. Cela a été une concession aux employeurs, où on leur a dit : <Ecoutez. Dans le cadre de la planification de votre gestion, on ne vous imposera pas de reprendre un individu trois ou quatre ans après.

C'est un choix de société. Comme tel, on peut certainement le critiquer. Où est-ce qu'on s'arrête? Est-ce que le droit est absolu ou relatif? C'est une grande question philosophique...

Mr. Wildman: My understanding of your response is that whatever is written in the law to be enforced is dependent on the administration of the Workers' Compensation Board. If you are talking about an unorganized workplace with no union, in effect you are saying that the workers are not protected under the reinstatement, whereas they may be when there is a syndicate or a union involved.

Me Parizeau : Ce qui se passe en pratique dans les endroits qui ne sont pas syndiqués, c'est que, si le travailleur n'est pas au courant de son droit, il ne l'exercera pas. La CSST va intervenir dans très peu de cas. A l'heure actuelle, elle est excessivement lente à intervenir.

Dans le cadre de l'évaluation de l'emploi prévisible, de l'emploi convenable, ça prend énormément de temps; premièrement, pour que ça soit complété; et dans un deuxième temps, quand elle intervient auprès de l'employeur, elle intervient actuellement de façon très feutrée, tranquille et respectueuse des attributs de l'employeur.

Est-ce que ça va changer dans un futur, ou est-ce que la CSST va se rendre compte que son rôle devrait être un peu plus interventionniste? Je ne saurais le dire.

M. Leyraud : Je voudrais simplement ajouter, sur ce point-là aussi, que, dans la Loi 42, il y a quand même deux aspects qui nous paraissent importants qui ne figurent pas dans votre projet de loi 162. C'est concernant le retour au travail. D'une part, il y a un droit d'appel, ce qui fait que le travailleur qui se sent lésé peut en appeler devant la Commission, et la Commission peut ordonner une réintégration de l'employeur. Je pense que ce sont deux corollaires, qui sont indissociables d'un véritable droit de retour au travail. Même si, effectivement, ça a quand même les limitations que M^e Parizeau a présentées, ces deux points-là nous paraissent—

Mr. Wildman: So you think we would need the right to appeal in this bill if it were to be effective?

Me Parizeau : L'organisme qui s'occupe des accidents du travail en Ontario se trouve un peu juge et partie dans n'importe quelle instance. Je pense que ça va un peu de soi. Dans ce cadre-là, je pense que sa décision, à savoir, s'il devrait y avoir réintégration ou pas, devrait pouvoir être portée en appel. C'est la vie de l'accidenté qui est en cause, et, en termes de perspectives d'emploi et de perspectives de vie, c'est excessivement important dans n'importe quelle situation.

S'il y avait un syndicat et une convention collective, il a le droit d'avoir un grief. Ce n'est pas simplement de dire : on va voir l'employeur et on dit : <Veux-tu nous réintégrer?> Si l'employeur dit non, on ne nous réintègre pas. Alors, dans le même sens, si la CSST dit : <Non, nous autres, on considère que le droit ne s'applique pas>, normalement, il devrait y avoir une personne neutre qui devrait statuer : est-ce que, oui ou non, l'accidenté a le droit?

Je pense que c'est un droit fondamental, dans n'importe quelle société libre et démocratique, de pouvoir dire : <Je veux en appeler à une personne neutre et impartiale.>

Mrs. Sullivan: Like my colleagues on the committee, I appreciate the representation from Quebec. I am very interested in some of your comparisons of our bill with what is actually occurring in Quebec.

I am also interested in the reinstatement provisions in Quebec. We have had some testimony from our unionized workforce here relating to the seniority rules, which I understand apply in your legislation. Indeed, that may be something we are going to have to look at. One of the things that is of concern in an environment where only 30 per cent of our workforce is unionized is what that means for the injured worker in terms of how the union is going to assist that worker to get back to work. If you would like to comment on that, I would appreciate it.

What I really wanted to ask you about was that I understand the construction industry is included in your legislation and that there are special provisions for the inclusion of the construction industry, as there are for small business; that there are other eligibility rules for small business. I wonder if you could describe how, in Quebec, you have handled the construction industry participation in reinstatement and the smaller enterprise.

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Me Parizeau : A propos de l'industrie de la construction, je suis embarrassé. Je dois vous dire que je ne suis pas — il faudrait que je regarde dans la loi. Je n'ai jamais eu, jusqu'à maintenant, de cas à ce niveau-là, du droit de retour au travail.

Je sais qu'il y a effectivement des dispositions particulières. Je n'ai jamais eu à travailler dans ce domaine-là. Alors, je ne suis pas capable de vous donner une réponse. Je suis désolé. Il faudrait que je l'étudie; ça prendrait un certain temps. Si vous voulez que je le fasse, je pourrais le faire. Je peux vous sortir les dispositions appropriées, mais je n'ai pas eu de cas personnel où j'ai eu à effectuer ce travail-là. Donc, je ne peux pas vous donner de feed-back pratique sur la question.

M. Leyraud : Il y a un ensemble de dispositions dans la loi concernant le secteur industriel, comme la construction ou les mines, qui fonctionnent de manière tout à fait à part, et sur lesquelles, à moins d'être très lié avec les travailleurs des secteurs miniers ou de la construction, il est difficile d'avoir une expertise ou de développer un travail concret. Nous sommes désolés de ne pas pouvoir vous éclairer sur cette question-là.

Mrs. Sullivan: I think that kind of information would be useful, because we have had many people before us who are concerned with the exemptions to the reinstatement provisions of our bill, and particularly the

construction industry, which is a large employer, and small business, once again a large employer.

I think it would be useful to compare what has happened in other jurisdictions, what kind of accommodations had to be made, given, by example, in the construction industry, a hiring hall situation. I think that would be useful for us.

Would you like to comment just for a second, then, on the other question, which related to the place of the injured worker coming back into the unionized workforce when seniority rules apply?

Me Parizeau : Au niveau de la question de la construction, je peux vous dire ce qui est dans la loi. C'est juste que je ne peux pas vous donner de feed-back pratique ou une expérience pratique comme telle. Il n'y a pas réellement d'exemption du droit de retour au travail, au niveau du domaine de la construction.

C'est simplement qu'il y a une application qui est un petit peu différente, et qui va s'appliquer en fonction des corps de métier, avec les classifications qui viennent avec ça; c'est-à-dire que chaque corps de métier — vous devez détenir des cartes de qualifications, et, avant de pouvoir exercer votre droit, l'employeur peut exiger que vous repassiez vos cartes de compétence. Mais, comme tel, le droit existe. Je ne voulais pas laisser entendre qu'il n'y avait pas de droit.

Mr. Chairman: For the information of members of the committee, the witnesses today would like to continue with their brief. I know other members had indicated an interest in asking some questions, but I think it would be a courtesy to allow them to continue with their brief. Then when they have completed their brief, if there is time remaining, we can have some more questions this morning, but they do have more that they want to say to the committee. If that is okay with the rest of the committee members, we will turn the meeting back to the Toronto Injured Workers Advocates Group. Okay?

Me Parizeau : Je tiens à vous remercier de nous avoir entendus.

Ms. Godbout: You are correct. We have quite a few points that we would like to deal with from now till 12.

I would just like to pick up on something that the witnesses have mentioned. I think it is very important and I want to make sure it has been picked up in translation. It is that while the workers in Quebec do not like the kind of bill that they got, at least one of its features is an improvement over what is being offered in Bill 162 in that the workers there get full benefits while they are recovering from their injuries; that is, until maximal medical recovery has been achieved, workers are guaranteed 100 per cent benefits, which is not the case in Ontario.

As Mr. Leyraud has pointed out, it is absurd to want to evaluate the permanent effects of an injury at a time when the worker has not yet recovered. Also, that estimation should really be done when the maximum vocational rehabilitation has been achieved.

Ms. Endicott has some more points to make about other jurisdictions, Manitoba and Nova Scotia in particular. We will then go on to rehabilitation and reinstatement rights.

Ms. Endicott: I will also try to be fairly brief. I am afraid I am quite ignorant in the French language so I also was not 100 per cent sure of what our guests said, but I hope that what you picked up from it, among other things, was that there is a problem with deeming in Quebec despite the apparently strong language to protect against that kind of thing. Certainly in my discussions with our guests, it is quite clear that the process of rehabilitation is essentially a process of gathering information on which to deem workers, whether or not they have that job.

I want to reiterate that we feel one of the fundamental tasks of this committee is to really understand deeming and to really understand the language that does or does not lead to deeming. If you want a system that truly compensates workers for their wage loss, you have to find language that does not involve deeming. I know that Mr. Sorbara says this does not have deeming. It does.

One of our major points is this: We do think, in fact, that it would not be a bad idea for you to travel to other jurisdictions so that you would have more time than this rather restricted hour to question people about their actual experience.

In Nova Scotia, a committee called the Ministerial Action Group was appointed by the government to investigate how things should change in Nova Scotia. They did travel. They travelled all over the country, including Saskatchewan, Quebec and Ontario. They drew, among other conclusions, a conclusion in regard to wage loss. They said:

"It is the opinion of the MAG that the difficulties arising from assessing levels of physical disability are minor compared to the severe problems other boards in Canada are having with the 'deeming' process of determining the difference between what a person is earning or is able to earn."

In Nova Scotia they decided not to adopt this system. They did not decide to adopt anything better, but they did reject the wage-loss system. You can find that in their report called The Turning Point, which came out earlier last year.

In Manitoba they also did a very thorough investigation of the situation across Canada in regard to compensation for permanent disability. Their report is really quite useful as an overview. In fact, we have appended it to our brief, which you will be receiving this afternoon—not the entire report, which is quite thick, but the segment dealing with compensation for permanent disability.

This committee in Manitoba recommends a dual award system based on a lump sum for impairment and a permanent payment for prospective wage loss, which sounds rather like Bill 162. We are not so sure that the prospective disability is to be permanent with Bill 162, but we are told that it is supposed to be. However, what is recommended by the Manitoba committee is a world apart from what is being recommended in Bill 162.

"(i) The pension is to be set after optimal recovery from the injury, rehabilitation measures completed, and either a job found" or it has been determined that the person is unable to go back to work. That is when the wage-loss pension, permanent until age 65, is determined. Up until that point, full benefits are paid.

"(ii) The actual earnings are to be used" in the comparison, except in the case of younger workers where you would not restrict them to their wages at the time of the accident, but rather make some kind of prospective estimation of what they would have made.

"(iii) The pension" that is determined at that time "is not reviewable except on the request of the worker." If they find that the condition has deteriorated significantly enough or perhaps they have lost their jobs, as our friends from Quebec were talking about, they are put in a much more difficult situation of re-entering the workforce.

"(iv) Deeming is to be used rarely. It is reserved for those situations where a worker refuses suitable employment which the board can show a preponderance of medical opinion indicating the worker's fitness for."

Basically, deeming is only where a worker actually refuses a job which has been shown to be medically suitable for that person. The job has to really be there. The rehabilitation will be provided. There is a right to that.

The concepts in Manitoba's proposal are ones that provide financial security, independence and effective rehabilitation, which are talked about but not achieved in other jurisdictions. We put to you that legislative wording built around these concepts would essentially meet the needs of injured workers. It is a simple system. It does not waste administrative and rehabilitation resources on multiple reviews of deemed wage loss.

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A key element in the Manitoba proposal is that attention to effective rehabilitation is in the interest of the worker and of the WCB. The worker must be sincere in his efforts of returning to work, otherwise he will get deemed; and the board must be sincere in its rehabilitation efforts, otherwise it will stuck paying a significant pension for the rest of that person's life until he is age 65. It is that dual responsibility for effective rehabilitation which is a key element in Manitoba proposal.

With that I will conclude and just urge you to further study these other jurisdictions and make sure you really understand this concept of deeming, which we will come back to this afternoon. Perhaps I should comment now that we also have a person from Saskatchewan who will talk to you about the experience there.

Ms. Godbout: Sebastian Spano will be speaking on the issue of rehabilitation. We will have John McKinnon talking about the issue of reinstatement.

Mr. Wildman: You are wearing your other hat today.

Mr. McKinnon: Yes, I am at my new job now. It is true I am a rookie, but they have given me the option of talking a little about the reinstatement and re-employment provisions. I am always happy to express my opinions, but these opinions are shared by the group.

This is section 54b of the legislation, the reinstatement and re-employment provisions. This is the issue of job security. That is very important, because the key and primary demand of the injured workers' community for over a decade now has been job security or full compensation. In this bill we see an attempt, at least, to deal with that demand or that request of injured workers.

The need for job security and the basis of the demand is based on the fact that, unlike the general population, there was a 100 per cent employment rate among injured workers before they had their accidents. They have every right to expect that they can be returned to useful employment. That is why either job security or full compensation for the loss of earnings is very important. It is touted as one of the most important aspects of this bill.

It is a concept that is not new to the Legislature. Back in 1978, Mr. Di Santo introduced a private member's bill requiring the employment of disabled people in general and setting minimum quotas for employment of disabled people. Again in 1980, in Professor Paul Weiler's report, Reshaping Workers' Compensation for Ontario, he made recommendations that are similar to the ones we find in Bill 162, but with an additional seniority right of sorts, by which an injured worker had the right to bump someone who was occupying a suitable position at the accident employer's enterprise if that person had been in that position for less than a year. In the white paper there were actually stronger reinstatement rights.

It is my submission that an analysis of the job security provisions is one of the key determining factors as to whether this bill should stand or fall. First, you have to look at who gets job security. You are familiar with the criticisms already, the exclusion of people in small workplaces, exclusion of the construction industry and the exclusion of people who have been on the job for less than one year. I am sure you have heard complaints about that.

I understand there has been an expression of goodwill to do some correcting to the legislation to provide equal rights for all injured workers, and that is a positive step. But consider, for example, if you just wiped out those particular exclusions and left in the regulations the power to exempt certain industries. In my submission, even that is still a dangerous concept, because there is absolutely no guidance in the act as to what principles should excuse an employer from having to comply with reinstatement provisions.

There is, in my submission, a real possibility that before long we could find, like in Bill 162, regulations that would exclude possibly more than half of the workforce. I do not have the accurate figures on who would be excluded by the exceptions that are in place there, but in discussions I have had with other people, I am led to believe that it could conceivably be half of the workforce.

Looking at those people, people in construction work in the heaviest and possibly the most dangerous industry there is. Certainly, they are the people who ought to have affirmative action, who ought to have some kind of reinstatement rights. The same with people in small workplaces. They are the least likely to be protected by a collective agreement or to have an active and powerful health and safety committee, so, again, they need the protection.

When you look at new workers, people on the job for less than one year, certainly in dangerous employment it is the new people who have the highest risk of having serious injuries and again need some kind of affirmative action.

The exemption is not acceptable, and leaving exemptions to the regulation still does not address the problem of on what basis people should be excused.

You also have to look at what injured workers get. It is our position that the bill really generates false hopes about what they are going to get. The injured workers who are not excluded will really find very little that

they do not already have. An injured worker who is fit to return to his old job can have it back if he is fit within two years, and that is good. I do not mean to belittle that, because in some cases it can be important.

I know I heard recently of a postal worker who committed suicide because, although his doctor had cleared him to return to regular work, he ran into interference on the part of management with getting his regular duties back or getting some duties back.

The Vice-Chairman: In Ottawa.

Miss Martel: No, it was in London, yesterday.

The Vice-Chairman: In London yesterday? There was a suicide in Ottawa as well. Sorry.

Mr. McKinnon: There was a suicide in Ottawa some time ago. This past week, I believe, another worker took his life; in that case, he was cleared to return to regular work.

It is our experience that this has not been the problem in the main that plagues injured workers. I have seen many employers who are happy to take back a worker who makes a complete recovery. The workers who do not make a complete recovery are perhaps better able to find the same kind of work that they were doing than injured workers who suffer a permanent disability and cannot return to their regular work.

If you, as legislators, are looking at the big picture and trying to do something about the people who most need help, in my submission, the people who most need help are the people who have a serious permanent disability who cannot return to their regular work. Those people get no concrete rights in this bill.

The employer will be told to offer a suitable job to the injured worker if one becomes available within two years of the accident, but in practical terms, that will be the end of it for most injured workers. There is no obligation on the board to take any positive steps to investigate or require modified work, nor is there any obligation on the employer specifically to provide modified work. There is not even, as yet, any appeal to any independent body here.

In my submission, it is really a misnomer to refer to these provisions as rights or entitlements because there is simply no way of enforcing them. An employer who is caught refusing to comply may be given a penalty which, in my submission, is relatively small; but there is just nothing in the bill that enables injured workers to require their employer to obey the law, to offer the job. There are no real reinstatement or re-employment rights and the worker cannot be ordered reinstated.

In terms of what injured workers already have, they do have the provisions of the Human Rights Code. In my submission, the Human Rights Code puts a higher duty on employers to accommodate injured workers and disabled people in general than Bill 162.

There is a further problem, from my reading of Bill 162 and the Human Rights Code, in that the two are really incompatible, if not completely irreconcilable, in what they are trying to do and in the people they cover.

It is a bit alarming, I think, for the disabled community in general and for injured workers to see a bill reach this stage that apparently proposes to cut back the rights of workers who are handicapped as a result of a workplace injury, but Bill 162 provisions do appear to be weaker. They also promise to create a legal nightmare in terms of the jurisdictional overlap of the two bodies and the options a worker has for pursuing a human rights commission complaint, a workers' compensation request and the possibility of conflicting decisions being made by those two bodies.

I do not think it is fair to think that will not be exploited against the interests of injured workers by some employers. I have heard that there are employers' groups who are proposing: "Fine, let injured workers have whatever Bill 162 gives them and let the handicapped people in general have whatever the Human Rights Code gives them. Just draw a line and the two cannot have the same thing."

I do not think that is particularly acceptable in anyone's view, but there are legal arguments that already support that without any change in the legislation. You should take a look at section 33 of the Human Rights Code, which is a provision which says that where, in the opinion of the human rights commission, a certain situation is adequately taken care of or is more appropriately taken care of by another piece of legislation, then the human rights commission can refuse to entertain a complaint. So we could well end up with employers fighting the authority of the human rights commission to hear a complaint from an injured worker because there is something dealing with re-employment in Bill 162.

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The Human Rights Code is quite all-encompassing. It applies to all workers. It is not bound by time limits from the onset of disability. It gives a real right to modified work, because the employer has to take reasonable steps to accommodate an injured worker if that injured worker cannot perform the essential duties of the job that is available. Those rights are real rights in the sense that if the employer refuses, the Ontario Human Rights Commission can order the worker reinstated into that job and can order the employer to pay back pay. So there are some teeth in that legislation already to deal with the reinstatement issue.

The problem right now seems to be not so much a lack of legal rights on the part of injured workers with respect to re-employment and reinstatement, but more a lack of knowledge of those rights and a lack of the means to enforce those rights within a period of time that is reasonable. Early return to work is important and the Ontario Human Rights Commission has serious problems in dealing with complaints. We are aware that the Ontario Human Rights Commission has made a proposal for a sort of joint project dealing with the issues of reinstatement or re-employment, and we think that is worth further study because it could solve the problem that injured workers have now: not a lack of legal rights, but a lack of knowledge of those rights and a lack of access to a system to enforce them.

I am given to understand that complaints are taking from one to three years to be processed at the Ontario Human Rights Commission and that the appeals in those complaint procedures are late in the stages. To be acceptable, a jointly administered return-to-work program would have to have an administrative process that is as speedy as other decisions at the board, and also that has comparable appeal rights to other decisions at the board. Otherwise, an injured worker can be cemented into a nonproductive lifestyle

for so long in fighting this issue that the right to return to work is an empty one. So we think it is worth considering some sort of jointly funded project with the Ontario Human Rights Commission to deal with reinstatement.

Also, there is the problem of workers who are under federal jurisdiction; workers under the Canadian Human Rights Act. Currently, there are people working in Ontario, for example the postal workers and the railway workers, who are covered by the Ontario Workers' Compensation Act, but at the same time human rights complaints are dealt with under the Canadian Human Rights Act. So there is a need to provide all workers covered by the Ontario Workers' Compensation Act with the same rights to re-employment and reinstatement. These details can be worked out without an overhaul of the Workers' Compensation Act.

Before resolving the issue of what role the Ontario Human Rights Commission could play in dealing with injured workers' needs for reinstatement, I would like to pose a question about whether accident employers should have a higher duty to re-employ their injured workers than they have with respect to handicapped people in general. At best, we are talking now about giving injured workers the same right to a job with the accident employer as any handicapped person has to that job when that job comes up.

At the time when the demand for job security became a platform in the campaign for injured workers' rights, injured workers did not have those re-employment rights under the Human Rights Code. The demands of injured workers, the requests for reinstatement, were based on the principle that they should have a stronger right to return to some job at their accident employer than the general public has at that workplace, because they lost their job and their health in the service of that employer.

The disabled population in general has certain rights to modified employment within its abilities. Injured workers' demands for job security were based on the principle that they should have stronger rights to a job at the accident employer than the general public. So it is our position that injured workers have a stronger claim to return to the accident employer than other handicapped people have.

Consequently, the need arises to modify the provisions of the Human Rights Code to accommodate this stronger right of injured workers at their accident employer. This can be done, because under the Human Rights Code an employer can be excused from his obligation to employ any handicapped person who has applied for the job if it would cause undue financial hardship. That is one of the escape clauses in the Human Rights Code.

It is simply necessary to take this barrier from re-employment at the accident employers and require the WCB to accept financial responsibility for the modification of a job. That is clearly within the mandate of the WCB and it is necessary in order to recognize the special connection that permanently disabled workers have with their accident employer.

Just to conclude, our position is that section 54b does not give injured workers really any greater claim to job security than they already have, and it certainly does not give the help that is needed to those who need it the most. The Ontario Human Rights Commission might be able to help solve the problem, but if Bill 162 is passed it is going to cause a jurisdictional nightmare in dealing with the overlap between the two provisions. Injured workers are really better off right now without this part of Bill 162.

Ms. Godbout: We were going to deal with the issue of rehabilitation now, but it seems we would need an extra 10 minutes to do so. If the committee were prepared to give us 10 minutes, we could deal with the issue this morning and finish it. Otherwise, we will deal with the issue this afternoon.

Mr. Chairman: If I am detecting the vibes correctly, I think that would be acceptable to the committee.

Mr. Spano: Part of the problem in presenting a submission on rehabilitation within Bill 162 is that I will be making presentations on what is not there, because I think that sums up what Bill 162 will do for rehabilitation: virtually nothing.

What the bill will give us is a new section 54a. I would argue that if the legislators' or if the ministry's intention was to do nothing with respect to rehabilitation, they could have left the old section 54 alone as it was, because that basically gave the board the authority to do nothing or to do as much as possible. The discretion was there, so there was no need for this section 54a. It is simply redundant.

I guess it raises the question: What is the real purpose of section 54a if we did not need to do anything about it? In our submission, section 54a is really not about rehabilitation, it is about assessments. It has more to do with deeming and serving the process of deeming to determine wage-loss entitlement than it does with anything else. That is just by way of opening statement.

Before I go on with the substance or lack of substance in Bill 162 with respect to rehabilitation, I would like to impress upon the committee the human aspect of permanent disability and the human aspect of employment, as well as re-employment and rehabilitation.

We all know that being gainfully employed provides many benefits and privileges to us. Most of us place a great value on having a job, because it gives us a number of things. It gives us income; for most of us, the only source of income. It gives us a purpose in life, I suppose a reason to get up in the morning, a focus for our energy, our creativity, our talents, but more importantly, it gives us security, security in knowing that we can continue to keep our lives functioning as we are accustomed to. It also gives us economic security, and I think that is really important, because in Ontario the good and Ontario the prosperous, it seems that prosperity is not shared all that equally. It is not even shared all that fairly. To lose that economic security can mean devastation for even the best of us.

That is something that should have been kept in mind when Bill 162 was drafted. We are told we have re-employment, we are told we have rehabilitation, and this is supposed to prevent the worker from slipping to a lower economic status and losing all these privileges and all the good things that come from being employed. That is not the case.

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Rehabilitation should have been a key component of the bill. It should have been crucial to the whole system of compensation that is contemplated by the bill, but in fact it is not. Rehabilitation has essentially taken a back seat to everything else in the bill. Rehabilitation is visible by its absence, and rehabilitation should have served the goal of returning the worker to employment. It should have returned the worker to some sort of level of

economic independence. We are not suggesting that Bill 162 should have created all kinds of rehabilitation opportunities, like sending the worker to law school if he chose and maybe becoming a legislator at some point in his life. No, that is not what we are suggesting.

Mr. Wildman: You do not have to go to law school to become a legislator.

Mrs. Sullivan: Thank God.

Mr. Chairman: It is better if they do not.

Mr. Spano: Okay, but the point is that injured workers have not demanded such lofty things. All they are demanding are some basic rights: basic rights to return to work, basic rights to have their economic independence and just basic rights to restore them to some sort of level of dignity and functioning. Very clearly, it does not do that; which then raises the question: what is the bill really doing?

Since it is not doing very much in terms of rehabilitation, it is certainly not giving the worker a right. Contrary to the statement of the Minister of Labour, it is not a right. As I am sure you are all aware by now, and it has been repeated ad nauseam throughout the hearings, what the worker is getting is a right to an assessment. An assessment of what? An assessment of whether the worker needs rehabilitation or not. That is a far cry from a right to rehabilitation. It is a right to an assessment.

What will this assessment do? We are told that it will help the board in identifying the worker's needs. That would be nice if indeed you would do something to build upon this information that you got from the assessment, if the information were used perhaps to build on someone's skills and to find out exactly what the obstacles are to the person becoming rehabilitated.

From our analysis of the bill and from looking at the current state of things at the Worker's Compensation Board, specifically looking at the new vocational rehabilitation strategy, which the board has been touting as its masterpiece—and it is far from a masterpiece—it is pretty evident that this is not going to be accomplished. Assessments are probably—well, not probably; there is no "probably" about it. Assessments will have more to do with assessing the worker to obtain information, which will then be used by a pensions adjudicator or, under the Bill 162 scheme, by a wage-loss administrator to determine a worker's earning capacity or loss of earning capacity; in other words, what that worker is going to be capable of doing at some point in the future.

It is a rather cynical use of assessments, and it is highly misleading. If I were bold, I would probably say it is even dishonest, but I am not that bold.

Mr. Dietsch: We are glad you are not that bold.

Mr. Spano: Thanks. The assessment is really serving the purpose of getting the profile from some assessment centre of what this worker is likely capable of doing; in other words, what jobs this worker can do, given a number of variables. That is then translated into a real job. It will take that occupation, place a value in terms of salary on that occupation and then deem that the worker can earn that salary. That will be deemed to be the worker's wages, and the wage loss will be calculated from there. As I said, this has

more to do with benefit entitlement; it has absolutely nothing to do with rehabilitation.

I would like to say something about the vocational rehabilitation strategy because, as the board has mentioned in a number of its documents, particularly its 1989 agenda as well as the document outlining the implementation of the strategy, the board has indicated precisely that the strategy basically will be the blueprint for rehabilitation under Bill 162. There have been a number of statements, and I can actually quote from them, if you like. Here we are.

In the board's document outlining the strategy, the board has stated as follows, "The vocational rehabilitation strategy is being introduced at a time when amendments to the current legislation are being pursued." Pursued by whom, I do not know. "The strategy and the legislation are consistent in philosophy and approach to the delivery of vocational rehabilitation services. The strategy complements the proposed legislation in many areas."

That is at page 13 of the strategy document. This, I note, was written on June 27, 1988, around the same time that Bill 162 was introduced. Clearly, the board was anticipating the bill. It is also in the board's 1989 agenda, at page 22. It states:

"While Bill 162 is being debated in committee and in the Legislature, it is necessary for the board to prepare itself for implementation. The vocational rehabilitation strategy already under way will be sufficient to implement the new service requirements as laid out in the bill."

The bill has not even become law and the board has already invested numerous millions of dollars on a strategy that is supposed to serve Bill 162. It seems to me they are jumping the gun a bit.

Mr. Wildman: Maybe they are not.

Mr. Spano: Let's hope. Okay. I would like to talk about some of the main features of the strategy and what the strategy does. First of all, the strategy will abandon the board's own principles of rehabilitation. The board had laid out, in its procedures manual, clear principles and a philosophy about rehabilitation. This is visibly absent in the strategy.

The principles and philosophy of rehabilitation used to be—and I will not quote it all because it is quite lengthy; I will simply take pieces out of it. On philosophy, it says, "At the Workers' Compensation Board...our belief is that rehabilitation is not complete without employment in a useful job for which the person is suited." The goal of rehabilitation used to be, "Provide measures and opportunities to achieve the most effective possible restoration of the injured worker to an earning capacity and a place in the community."

To me, that is quite broad and sweeping. Although it was not always adhered to in practice, at least it was something for us to refer to in the event of a problem. Now this is absent, missing from the strategy. Instead, what we have got in the strategy is a series of concepts like early intervention, goal-oriented plans, separation of benefit entitlement from rehabilitation, but nothing fundamental that says the board should have this particular goal, should set its sights on a higher goal and try to achieve it. Instead, these concepts are really more like operational guidelines. Early intervention is simply an operational concept; it is a program concept, certainly not a philosophy. So the absence of principles is the most glaring weakness in it.

I have already alluded to the fact that assessments really are the bulk of the strategy. There has been \$26.2 million allocated to the new strategy when fully implemented. Approximately \$9.7 million is for administration alone and roughly \$16.5 million is for section 54 expenditures. As we know, under section 54 the board will authorize the purchase of assessments, the purchase of training. In the document, they predicted a very small increase in the use of training. It leads us to wonder what we are left with. Perhaps half of that \$16 million is going to assessments. Really half of it is for rehabilitation of any kind and the bulk of it is clearly for administration and assessments. Again, that is designed to serve the whole process of deeming, to serve the whole process of wage-loss determination.

With regard to some other specifics of the strategy, there is also an emphasis on goal-oriented plans. Under a goal-oriented plan, a worker and the rehab counsellor sign a contract which states, "These are the goals that are set out," and there is also a time limitation set out in the actual contract. There are some questions.

On reading the document, it is clear that if the worker does not achieve the goal within the time frame specified, or if at the end of the, say, one-year time frame, it turns out that the goal was inappropriate, to renegotiate that program or to renegotiate a plan would be extremely difficult to do. The board has stated it will renegotiate only if there are extenuating circumstances beyond the control of the worker. We can predict that there will be a pretty stringent test of what those circumstances would be.

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To conclude—it seems we have taken up quite a bit of time here—rehabilitation is not achieving the goal. Bill 162 has ignored the demands of injured workers, the reasonable demands of injured workers, to decent rehabilitation, to a right to rehabilitation. The consequences of Bill 162 would be an erosion of rehabilitation under the vocational rehabilitation strategy, an erosion of services, an erosion of benefits.

I should mention something I overlooked, which is the limitation on financial assistance while involved in rehabilitation. Financial assistance is a key component of any rehabilitation program. A person cannot undertake a one-year upgrading course if there are no benefits coming and if all he or she has got is a pension. Under Bill 162, we know what that pension will amount to. Clearly, the policy is now in place at the board to restrict financial assistance while on rehabilitation programs, and this will only be perpetuated and sanctioned by Bill 162. Thank you. That is all.

Ms. Godbout: Mr. Chairman, before we break for lunch, I would like to briefly respond to a comment made by Mrs. Stoner regarding our position. If I understood the comment correctly, it was that our position was somewhat contradictory, that there had been a long debate on this bill and yet there was a great rush to pass it. The comment is clearly wrong in our view. It is true that there has been a long debate on workers' compensation in this province, but there has never been, until these hearings started, a debate on Bill 162.

It is interesting to look at the composition of the committee today. You can correct me, Mr. Chairman, if I am wrong, but it seems to me that the members of the committee are fairly new to the long debate on workers' compensation. Obviously, this government needs to hear the debates and the arguments that were made in 1983, because obviously the introduction of Bill

162 proves to us that the arguments that were presented to the government then were not properly heard.

Mr. Chairman: A number of members have indicated an interest in asking some questions. Do you want to do that now? I know you have somewhat of a rally or something at one o'clock. The very latest we would want to go to would be 12:30. We can wait until this afternoon when you have completed your other presentations; then we can all get into the fray at that point.

Ms. Godbout: If the committee is prepared to—

Mr. Chairman: Another 10 minutes or so? Okay.

Mrs. Stoner: First of all, in response to Ms. Godbout's statement, I said very specifically "a very long debate on workers' compensation," which was a direct quote of what you said.

Mr. Wildman: A debate of the deaf.

Mr. Chairman: Order, please.

Mrs. Stoner: I am sorry; that is exactly what was said.

The question I have to you on vocational rehabilitation is that the cases I have had some experience with have had great difficulty in getting the assessment: (a) it took a long time and (b) they sometimes did not get it. This legislation provides for that assessment on a much more timely basis. The point you raised, though, that I want to question is, does the new vocational rehabilitation strategy the board has brought out specifically rescind its policy and its principle of statement, which you quoted to us?

Mr. Spano: Clarification, I guess, is in order on that. All right. The strategy will replace the whole structure of rehabilitation. In discussions with board officials, I was told that the old manual, which contained the philosophy, the goals and principles and so on, will now be rescinded and will be replaced by a manual that will closely reflect the strategy.

Mrs. Stoner: I would really appreciate seeing that in some sort of written form. The strategy and the principles outlined within it are documented and the strategy for the new policy is documented. I have not seen in writing a document that states one rescinds the other. If you could provide that, I would really appreciate it.

Miss Martel: Just on that point, can you not only provide us with the strategy and the policy, but also with the board's letter that came out just in January stating how the changes would take effect at the operational level, so that the committee has a clear idea, not of the board's lofty policies but of actually how it is going to be implemented on the operating level? I think that makes a big difference in seeing that what their principles are have nothing to do with the way this whole thing is going to work.

Let me ask Marion Endicott some questions on deeming, because I am afraid we are not going to get to it this afternoon and I think it is important we have some discussion about it.

We have been wrestling with this whole question of deeming and how

unfair it can be, and we have had the examples of workers who have been deemed and have been cut of benefits as a consequence. There has been some idea by some members of this committee that if we could define what is "suitable and available employment" and have a strict definition for that, we would undermine the problems we have seen with deeming.

I wonder if you want to comment on whether that is enough or whether you think some of the other provisions that must be taken into account for deeming on page 8 also come into play and also cause some real problems that are not going to be done away with just by a mere definition of what is suitable and modified employment.

Ms. Endicott: Just to set your mind at ease about deeming, I would like to say that we are coming back to it, hopefully in a fairly big way, this afternoon, but I would be glad to answer your question.

We would not see any amendment that strictly defines "suitable and available" work as sufficiently addressing, in any way, shape or form, the problem of deeming. As long as you are looking at a prospective wage loss, looking into the future and taking into account things like how well the board thinks somebody is going to do in a rehabilitation program or how well the board thinks somebody is going to—what are the other terms? I cannot remember—it is a guess at the future that involves guessing at the available work and the suitable work as well, no matter how strictly that is defined.

Although we would like to see clear definitions of "suitable" and "available" in the legislation, that does not correct the basic problem of deeming.

Miss Martel: If I can continue on with that, what do you do in the case that one of the other criteria outside of suitable employment also happens to be—I am quoting from section 45a of the act—"such other factors as may be prescribed in the regulations."

Ms. Endicott: Correct; yes. As long as we have anything that gives the board power to put things in regulations, we find this to be a tremendous problem.

The Minister of Labour (Mr. Sorbara) points to the fact that giving the board power to put things into regulations in this legislation, he feels, is something that will limit the discretion of the board. In our minds, this is something that gives even more power to the board than it presently has, and I quite honestly cannot see how anybody could think otherwise.

To put things in the regulations is simply an attempt to prevent public scrutiny of the process, on the one hand; and on the other hand, it will cause the tribunal to be limited in its ability to look at this question. We have a lot of problems with the regulation-making power of the board.

1220

Mr. McGuigan: First of all, I want to thank the people for coming here, as my colleagues have done, especially from Quebec. If it is in order, I would like to go back to Mr. Leyraud to get information that would be helpful to us.

He said the purpose of the act was to save employers money. What has been the experience in Quebec since you have had the new act?

Interjections.

M. Leyraud : Oui. Vous avez fini de poser la question?

Mr. Chairman: Perhaps you could put the question again, Mr. McGuigan.

Mr. McGuigan: What has been the experience in Quebec as to the payouts? You said earlier that the purpose of the act was to save employers money. It would be helpful, as you have had some experience there, to indicate to us whether the payouts have gone up or down. Do you have any figures on that? For instance, in Ontario we are now at about \$1.5 billion a year and it has been rising. Since the new act has come in in Quebec, have those figures gone down or have they continued to rise as they have here?

M. Leyraud : En ce qui concerne les chiffres dont on dispose, il y avait, en 1986, un déficit de la Commission de 357 millions de dollars et, en 1987, le déficit a été ramené à 90 millions de dollars. Donc, il y a eu une baisse de déficit significative. Cependant, il est difficile de savoir précisément à quoi ça été attribué. Je m'explique.

On peut, bien entendu, le référer au fait que, dans notre projet de loi 42, la somme forfaitaire constitue une diminution de gains très appréciable pour la victime, mais on peut aussi penser qu'il y a eu tout un ensemble de directives, de pressions plus ou moins directes ou indirectes — et ça, nous en sommes très au courant — pour qu'il y ait moins de déclarations d'accident.

Exemple : ça veut dire que dans une entreprise, la CSST, l'année passée, a mis sur pied une opération, qu'elle a appelée <Opération moins 10 %>.

L'objectif publicitaire, c'était qu'il y ait moins 10 pour cent d'accidents. Dans les faits, on s'est rendu compte que tout un ensemble de pressions ont été faites, soit par la CSST, soit par le patronat, pour qu'il y ait, d'une part, des restrictions au niveau de l'acceptation des réclamations et qu'il y ait, d'autre part, des restrictions au niveau des déclarations d'accident. Cela veut dire, pour notre Commission, contester systématiquement la relation de fait, c'est-à-dire remettre en cause le fait que la lésion soit reliée à un accident. Cela veut dire, pour le patronat, faire un ensemble de pressions, qui passent, y compris, par des concours de jours sans accident, pour qu'il y ait moins d'accidents déclarés.

Alors, pour essayer de faire le tri entre les différents aspects qui peuvent conduire à une diminution du déficit, ce n'est pas très facile. Les chiffres que je vous cite sont extraits du rapport annuel de la CSST.

D'autre part, nous ne disposons pas du tout au Québec — et je ne sais pas si on en dispose ici — mais on ne dispose jamais des chiffres qui concernent les accidents réels. On dispose toujours uniquement des chiffres qui correspondent à des réclamations faites, acceptées ou refusées.

En ce qui concerne les cotisations des employeurs, elles sont passées de 2,05 \$ en 1986 à 2,50 \$ en 1987 par 100 \$ de salaire versé. Donc, il y a eu une hausse de cotisation au niveau des employeurs.

Mr. McGuigan: I am sorry. My translator was not working very well at the beginning, so I missed the very first answers you gave. I wonder if Nicole Godbout could translate. I just wanted the simple fact of whether there was an increase in the payouts or a decrease in the payouts. I appreciate what Mr. Leyraud has said.

Ms. Godbout: I wish I had taken better notes of the details. From what I understood, the deficit went down, but actually the assessments paid by the employers have gone up from \$2 and a few cents to \$2.50. Mr. Leyraud was also pointing out that nobody really knows why the deficit went down. There are no hard facts on that issue, but certainly it has been noted by many that there is much more pressure being put by both the board and employers on workers generally to underreport accidents. Perhaps that is one factor.

Mr. Wildman: The assessments are on accepted claims?

Ms. Godbout: Yes.

Mr. McGuigan: I guess we would have to have a further analysis of the sort of contradictory way things have gone. The deficit has gone down and the assessments have gone up. We would have to have a further analysis of that, I would think.

Mr. Carrothers: Ms. Endicott, I wonder if I might follow up on something you said, back to the first session of presentations, because I found the discussion of what has gone on in Saskatchewan and also in Quebec helpful in terms of where those systems are perhaps not working. You have enumerated the problems.

What I took from what you started to say on Saskatchewan and also when you mentioned what is going on in Manitoba was that since we all agree the system of permanent pensions here, even with supplements, is really not working, not satisfying the need, and that we have to go in some direction, this attempt that has gone on now in Saskatchewan, Manitoba and Quebec—I guess is proposed in Manitoba, has gone on in Quebec and is proposed here—to take that permanent pension, break it down into its components and start dealing with the intangible losses, the pain and suffering, do something for that and then look at the financial implications for the worker through some mechanism, is an improvement.

I do not want to get into the details of whether this does or does not do it. It is more the general principle, but moving in that direction, that perhaps we have not yet found it, or we could make this work better, but that this is the type of improvement we should be making to our system.

Ms. Endicott: I do not think we would agree. Quite honestly, we do not see the present legislation as being that bad. The problem is the board's implementation of that legislation.

We absolutely agree that the permanent disability pensions given by the board are inadequate for the vast majority of injured workers, but the present legislation also has a provision in it, subsection 45(5). If you read the comments of people like yourselves who introduced that provision, the purpose of it was to make up the difference between the actual wage loss experienced by the injured worker and the pension that he was granted.

Now, that did not bring in the concept of pain and suffering, and certainly we would not oppose anything that dealt with that, but not at the cost of actually lessening the amount of secure financial support an injured worker could expect after an injury, which is what Bill 162 proposes. The problem with subsection 45(5) as it is presently constituted in the act is that it says "may" rather than "shall," and the Workers' Compensation Board, in particular in the last 18 months, has decided to reinterpret what that section means and to apply it in a very stringent way.

Mr. Carrothers: I think what you—

Ms. Endicott: Just to finish on that point, we would prefer to see the supplement provision wording changed from "may" to "shall" as an interim measure to deal with the problem, but we do agree that there has to be another system that will deal with it more satisfactorily. We do not think it such a major change as the kinds of things that have been proposed in Bill 162.

Mr. Carrothers: Maybe we are saying the same thing then, because I guess what I was asking was whether that goal was where we should go. I am glad we can have discussed whether this bill gets us there. What I want to get at is the objective, that this may be a better way to try to compensate.

Ms. Endicott: I guess I was not 100 per cent sure of your goal. As long as it includes a sufficient permanent disability pension, something injured workers can count on no matter what else happens, then maybe we would agree.

Mr. Carrothers: One more detail: As you mentioned, there have been some reports on the Saskatchewan situation and I think you indicated some of the suggestions of those reports were not implemented.

Ms. Endicott: Right.

Mr. Carrothers: But I took out of this that what is now happening in Saskatchewan is that rather than scrapping, one is trying to improve, that in fact there is general agreement that perhaps one can make that system work better and that if one could come up with that better mousetrap based on that system, one might have what one wants in terms of workers' compensation.

1230

Ms. Endicott: Yes, it is possible in a very theoretical sense. We would have to sit down around a table and really—

Mr. Carrothers: I sometimes like to try to find out where I am going and then figure out how to get there, as compared to getting mixed up with the two. It seems that this type of improvement has much to compel it to me. Mr. Parizeau has taken us into what a court might do, and in some ways this mimics it, granted not completely. It has just seemed to me throughout all of this that it is a good way to go. In Saskatchewan, obviously that report did not recommend scrapping; it recommended improving this type of system.

Ms. Endicott: We will hear more about Saskatchewan this afternoon.

Mr. Carrothers: Maybe that will be that more helpful.

Ms. Endicott: Maybe at that point you would like to come back to it, because certainly, as I understand it, there are many people from Saskatchewan who would rather go back to the old system. Again, it is in reaction to how poorly this system is working now.

Mr. Carrothers: So what they have does not help them, but maybe if they could make what they have better, they would be in a better situation.

J'aimerais avoir la même réponse de M. Leyraud, si c'est possible. Au Québec, c'est la Loi 42, je pense, qui a changé le système; et je me demande si ça, c'est la direction que vous aimeriez tenir dans la province du Québec.

M. Leyraud : En 1985, lorsque le projet de loi 42 est venu devant la législation, la position du mouvement syndical et des associations de défense, c'était : nous n'avons pas besoin d'une nouvelle loi. Ce qu'on réclamait, c'était que les principes de l'ancienne loi qui — un des principes fondamentaux de l'ancienne loi, c'était de maintenir une indemnité forfaitaire et de maintenir une indemnité permanente. Nous pensons que ce principe-là, c'est un principe qui doit rester fondamental dans toute loi qui concerne des accidentés qui peuvent avoir des lésions temporaires et permanentes.

Donc, la position des accidentés, c'était, plutôt que de faire une nouvelle législation, de modifier et d'amender, sur des points très précis que nous avions présentés, l'ancienne loi. Cela veut dire que de comparer les deux lois, c'est un choix qui est vraiment très difficile à faire. Tout ce que je peux vous dire, c'est que, au niveau des principes avec la nouvelle Loi 42, les accidentés y ont perdu.

Au niveau de la réadaptation, comme l'a précisé M^e Parizeau, il n'y a pas eu de grandes différences. Le droit de retour au travail, non plus, n'a pas amené de grandes différences. Par contre, où on a perdu énormément au Québec, c'est que, avec l'ancienne loi, nous avions un droit d'appel à un tribunal extérieur à la Commission; ce droit-là, nous l'avons perdu. Nous avons uniquement, maintenant, le droit d'appel devant un tribunal qui, dans les faits, est très lié à la Commission. Donc, c'est une perte assez importante.

M. Carrothers : Mais si on peut ajouter ces droits d'appel, ou si vous étiez en charge — peut-être que je peux le demander comme ça — est-ce vous cherchiez à changer la Loi 42 maintenant, avec ces améliorations que vous avez énumérées aujourd'hui? Et, en effet, les grands principes, la direction, c'est bon, mais peut-être que les méthodes ou les détails ne sont pas là maintenant.

M. Leyraud : Ce qui nous paraît important, dans la Loi 42, et que nous sommes prêts à améliorer, c'est la question sur la réadaptation.

Nous pensons que le droit, il est important qu'il soit là, il faut l'améliorer. Le droit au travail, qui est dans la Loi 42, qui n'était pas dans l'ancienne loi, nous pensons que c'est une bonne chose, mais, là aussi, il faut l'améliorer.

Par contre, sur la question de la rente, le remplacement d'une rente par rapport à une indemnité forfaitaire, nous pensons que c'est quelque chose qu'il faut radicalement changer, et nous préférierions revenir à l'ancien système avec une rente; ancien système qui ne nous satisfaisait pas entièrement, mais qui, au niveau des principes, nous paraissait plus intéressant. Je ne sais pas si j'ai répondu —

Mr. Chairman: I do not like to intervene unduly, but there are a number of people who have commitments in the next hour. I know I would be remiss if I did not express special thanks to our friends from La Belle Province. You have added much to the proceedings this morning and we appreciate it very much.

Mr. Dietsch: One point of order, Mr. Chairman, for the benefit of those anglophones around the table: The presentation, as I understood it through the interpretation, was very well done. I am not as polished in my French as I perhaps should be. I wonder if you could give us a copy of your presentation in English. Is that possible?

Mr. Wildman: Or in French.

Mr. Chairman: Regardless of which language, we will make sure that it is distributed to the committee en anglais for the members. Anything else?

Mr. Wildman: In view of the conflicting statements we have received regarding the experience in other jurisdictions, I would like to move a motion.

In view of the differing interpretations of the meaning, application and results of the dual award system and deeming, and the rights to rehabilitation and reinstatement provisions of workers' compensation legislation in other jurisdictions, I move that, before passing Bill 162, the standing committee on resources development travel to Regina, Quebec, Winnipeg and Halifax during the summer of 1989 to meet with the provincial officials there, representatives of their workers' compensation boards, injured workers, labour and employers in those jurisdictions, to learn their views about the effects of these provisions for injured workers in their provinces.

Mr. Chairman: If we exclude the preamble and deal with the motion as it is, I would rule that it is in order. Do you wish to speak, I hope briefly?

Mr. Wildman: Yes, very briefly, because I know we have such a busy day. We have seen—

Mr. Dietsch: On a point of order.

Mr. Chairman: When Mr. Wildman has finished speaking to his motion, then we can entertain another point, and Mrs. Sullivan was next on the list. Go ahead.

Mr. Wildman: I will be brief. We have seen conflicting views of the effects of the dual award system and the deeming provisions. There have been arguments over whether they could be changed, whether it is the administration or the principle, and whether it can only work if there is a real commitment to the worker having a job before wage loss is calculated.

We have also seen some conflicting views expressed before the committee about what reinstatement and rehabilitation rights mean in Quebec, for instance, and we have had discussions before the committee with conflicting views about what is happening in Saskatchewan, particularly conflicting with views expressed by the minister with regard to what happens in Saskatchewan.

I think it is important that this committee be fully aware of the ramifications of the dual award system in particular, and the rights to rehabilitation and reinstatement in those jurisdictions, before we move to pass legislation that will implement similar provisions in workers' compensation legislation in this province. I think we should not only hear from injured workers, whom I would like to hear from, but also from representatives of the Workers' Compensation Board and the provincial ministries involved, and labour representatives and employer representatives in those jurisdictions, to get a better understanding—I think much better is needed than we have around this table—before we pass this legislation in Ontario.

Mr. Chairman: I am sorry, Mr. Dietsch, I should really have entertained your point of order.

Mr. Dietsch: Yes, I think you should have, Mr. Chairman, and I will accept your apology.

Mr. Chairman: You have the floor, Mr. Dietsch.

Mr. Dietsch: I would like to point out that we were scheduled for 12 o'clock. We extended it for the courtesy of listening to the group on its presentation. Our friends opposite from the Progressive Conservative Party are not present. They have no way of knowing about this debate that is going on.

Mr. Wildman: I informed her.

Mr. Dietsch: In fairness to this approach, I believe we should adjourn the debate on this question until the subcommittee can review it.

Mr. Wildman: On the point of order.

Mr. Chairman: On the point of order, Mr. Wildman.

Mr. Wildman: I did inform our colleague from the Conservative Party and she indicated, frankly, that she was in support of the resolution, but she had a meeting she had to go to. I understand Mr. Dietsch's point. I realize we have a very busy schedule today. If he would prefer us to deal with this at two o'clock, I would be prepared to do that, but I am concerned that we not take time from the injured workers who wish to make representations before this committee at Convocation Hall this afternoon. But if the committee's wish is that we deal with it this afternoon—I am very serious about this.

Mr. Dietsch: Mr. Wildman obviously did not hear what I said, or maybe he did not want to hear—

Mr. Chairman: On a point of order, Mr. Dietsch.

Mr. Dietsch: —what I said. I said that I believe the motion should be adjourned until the subcommittee has had an opportunity to look at it. That subcommittee is made up of all three parties.

Mr. Wildman: My view on that issue is that the motion, if passed, then could be dealt with by the subcommittee and the subcommittee's job would be to determine how we could implement the motion.

Mr. Chairman: A motion has been put and a request has been made that it not be dealt with at this point. There are two choices at this point, it seems to me. One is for the 20-minute delay rule on a motion, in which case members could be called in for the vote. The other is for the mover of the motion to accede to comply with the request that it not be dealt with now, but be dealt with at a later point, such as two o'clock this afternoon or six o'clock this evening.

Mr. Wildman: I would be prepared to accept either of those two times.

1240

Mr. Dietsch: I believe that a motion to adjourn debate on the question takes precedence. The motion I would put before the committee is that the debate be adjourned on the motion until such time as the subcommittee has an opportunity to meet.

Mr. Chairman: I am a little confused with your motion. Is it a motion to adjourn?

Mr. Dietsch: No, the motion is to table the motion that is put before this committee until such time as the subcommittee has an opportunity to sit and meet.

Mr. Chairman: I am consulting with my clerk.

Mr. McGuigan: The motion to table is in order.

Mr. Chairman: Is it a motion to table debate on Mr. Wildman's motion?

Mr. Dietsch: That is right—until the subcommittee meets.

Mr. Chairman: I am having difficulty sorting out the motion to table. If it is a motion to adjourn the debate, I understand that. I do not understand it the other way. Why will the committee not accept the offer to deal with Mr. Wildman's motion at a later time today? Is there a problem with dealing with that motion at the beginning of business at two o'clock or at six o'clock?

Mr. Wildman: Either way is fine with me.

Mr. McGuigan: Can I be helpful, Mr. Chairman?

Mr. Chairman: I hope so.

Mr. McGuigan: As I understand tabling a motion, you can table it indefinitely so it never comes up or you can table it to a time, which my colleague has done. Again, that time could be near, it could be far or it could be whatever, but he can table it until a certain time. That is what he has done.

Mr. Chairman: Until 6 p.m. this evening?

Mr. Dietsch: Until the subcommittee meets.

Mr. Chairman: Yes, that is a different motion than tabling it for the committee to deal with.

Mr. Dietsch: I will repeat the motion again. I move that we table the motion that has been put forward by my colleague Mr. Wildman until such time as the subcommittee has an opportunity to meet and discuss this motion. Then it can be brought forward.

Mr. Chairman: I am having enormous difficulty with that motion because it is referring it to a subcommittee. I have difficulty understanding how that could possibly be—

Mr. Dietsch: If the chairman will recall, it is exactly the same discussion that took place when I put a motion to extend the time limits on hearings previously.

Mr. Wildman: The motion was withdrawn, as I understand it, at that time.

Clerk of the Committee: It was contained in his own motion. It was not on somebody else's motion.

Mr. Wildman: If I could be helpful, I do not want to get this into

an interminable question of order. If the committee does not want to deal with it later today, as I have suggested, but rather wishes it to be tabled until a later point, maybe we should vote on the tabling motion.

Mr. Chairman: First of all, I do not think that tabling motion is in order. Second, I do not understand the urgency of dealing with this particular motion today. Why can this motion not be put off and dealt with at another time? Because of the unique circumstances of the meetings this afternoon at Convocation Hall, I would suggest that it really is not the appropriate time to deal with the motion. I would ask if the mover of the motion would consider not putting his motion, but withdrawing his motion until the committee is meeting in a different venue.

Mr. Wildman: Mr. Chairman, I do not quite understand. I did not expect that this would produce a lot of debate. I did not think it would use time. I do not understand why the committee cannot deal with this at 6 p.m. today after the delegations are completed, and that way we will not be holding anybody up. That is my proposal; that we can deal with it at six today. I see no reason on earth for it to be postponed until next week or the week after.

Mr. Dietsch: Mr. Chairman, I would agree with your recommendation, if that is helpful.

Mr. Chairman: Yes, but the problem is that Mr. Wildman has a legitimate motion before the committee. After he put his legitimate motion, Mr. Dietsch moved a motion for which I am having enormous difficulty in coming up with an intelligent interpretation in terms of the standing orders. That may be my shortcoming, not Mr. Dietsch's, but I am having great difficulty seeing that as a motion that is in order, because it is a motion to table to a subcommittee.

Mr. Carrothers: I think, Mr. Chairman, it is a motion to table for this committee to consider, but the date of determining when this committee looks at it again is conditional on that subcommittee meeting. I am not sure it is to table to another committee. It is to table to this committee, the date as specified based upon the meeting of the subcommittee, if that is of any help to you.

Mr. Chairman: Would the committee consider a short recess? We will have a meeting right now of the subcommittee to try to resolve this, because it is ridiculous to prolong these proceedings with this kind of procedural wrangle.

Mr. Wildman: I would agree to that.

Mrs. Sullivan: We will have to proceed with the motion to table.

Mr. Chairman: Yes. This is a recess; we are not adjourning. We will recess for five minutes. The subcommittee will meet during that recess and then, in five minutes, the entire committee will meet to resolve the issue. We are in recess now.

The committee recessed at 12:46 p.m.

1305

Mr. Chairman: The standing committee on resources development will reconvene. When we recessed, there was a motion put by Mr. Wildman. Would the

committee like it read? It is understood? Is there any further debate on the motion? Is the committee ready for the vote?

Mrs. Stoner: This is the procedural motion?

Mr. Chairman: Yes. It is a procedural motion to travel during the summer. Is the motion understood? Is everybody ready for the vote?

Miss Martel: We have heard only our side. I would be interested in hearing from the other side as to what their thoughts are on this, if they have any.

Mr. Chairman: I have asked if there is anyone who wishes to speak to the motion. No one wishes to speak to the motion. All those in favour of Mr. Wildman's motion, please so indicate. All those opposed?

Motion negatived.

Mr. Chairman: Thank you very much for the expeditious way of dealing with the motion. The committee is adjourned until two o'clock at Convocation Hall.

The committee recessed at 1:06 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
WORKERS' COMPENSATION AMENDMENT ACT
THURSDAY, MARCH 23, 1989
Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Cureatz, Sam L. (Durham East PC) for Mr. Wiseman

Lipsett, Ron (Grey L) for Mr. Tatham

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Sullivan, Barbara (Halton Centre L) for Mr. Black

Clerk: Mellor, Lynn

Staff:

Luski, Lorraine, Research Officer, Legislative Research Service

Witnesses:

From the Union of Injured Workers:

Biggin, Phil, Executive Director

Endicott, Marion, Community Legal Worker, Toronto Injured Workers Advocates
Group; Injured Workers' Consultants

O'Connor, Donald, President, Saskatchewan Injured Workers Association

Roy, Don, Ontario Professional Fire Fighters Association

Zenga, Guiseppe, President

Buonastella, Orlando, Community Legal Worker, Injured Workers' Consultants

Yaeger, Karen

Gilbert, Michael

Young, Joanne

Kelpis, Chris

Samaris, Thomas, Interpreter for Chris Kelpis

Zakhar, Julius

Chiocchio, Mr.

Groulx, Russell

AFTERNOON SITTING

The committee resumed at 2:04 p.m. in Convocation Hall, University of Toronto.

WORKERS' COMPENSATION AMENDMENT ACT (continued)

Consideration of Bill 162, An Act to amend the Workers' Compensation Act.

Mr. Chairman: The resources development committee will come to order. As most of you know, the Ontario Legislature has asked this committee, consisting of all three political parties, to hold public hearings on Bill 162, An Act to amend the Workers' Compensation Act. When we have completed the public hearings across Ontario, the committee then will deal with every clause of the bill to determine whether or not any amendments should be made to the bill in its present form.

This afternoon, we have a very full agenda. We have this auditorium, Convocation Hall, until 6 p.m., at which point we really must leave because the university needs it. So we must be out of here by six o'clock.

There are a couple of rules that I would urge you to follow. One is that there is no smoking in this building. The second is that because the legislative committee is an extension of the assembly itself, there are no pickets allowed in the room. Those are basically the only rules we ask you to follow this afternoon.

We are very pleased to see such a large number here this afternoon, because your presence is important in the process of these public hearings. This afternoon we are going to hear from your representatives, you injured workers. At this point, I would turn that over to Phil Biggin from the Union of Injured Workers.

UNION OF INJURED WORKERS

Mr. Biggin: We are very pleased to have the opportunity to speak to this committee. We have very definite views on workers' compensation reform. Our organization was founded in 1974 and we have fought for 15 years on behalf of injured workers.

This is not the first time that we have appeared before the standing committee on resources development. I would remind you that we were here in 1983, and I guess the chairman is perhaps the only one I recognize from those days, but at that time we were talking essentially about the same legislation we are talking about today. At that time, we said we were not in favour of it and we wanted it set aside and the government set it aside.

Some people have said they were afraid the Union of Injured Workers was going to strike up some deal with the government, behind closed doors, to agree to certain amendments to this bill. I want to make it very clear at this point that at no point since we have seen this legislation have we considered making any deals on it. Our position is crystal clear: We want the bill scrapped.

I would like to ask the government members here if they have not thought, sometimes when they are sitting at home thinking about what is going on in the Legislature, how the government, in all its wisdom and with all the bureaucracy and competent staff, could come up with a bill that is so flawed.

We certainly have to recognize that individuals have basic human rights, and the human rights commissioner has come out and made a very pointed criticism of many parts of this bill. How can the government proceed to work along with a bill that is so flawed, that violates the Human Rights Code, that excludes a quarter to a third of the workforce from the provisions, that puts in age discrimination, that increases the discretion of the Workers' Compensation Board?

All the people in the Legislature, whether they be Conservatives or Liberals or New Democrats, have had their own experience as MPPs with their constituents in dealing with this massive, out-of-control bureaucracy. How could you say that a solution to this problem involves giving these people more discretion?

We cannot accept this. We say the only way we can deal with this kind of problem—and it is a massive problem; the Ombudsman and everybody else in our society has said that of all the problems facing us, workers' compensation seems to be one of the most serious. How can we respond if we do not set aside this bill and rebuild an act which is going to have some clout in it; an act which directs the staff of the Workers' Compensation Board to give justice to injured workers?

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We know this is not a perfect world. We know we are not going to get perfect solutions overnight, but we have been fighting for 15 years, and along with all of the workers we work with, we think we have a pretty good idea of what is wrong with this. Certainly, more than even the union itself, the individual members, the injured workers themselves know best what it is like to exist under this form of system.

Only today in the Globe and Mail you saw the article about the postal worker who took his own life because he could not get back to work because of a job injury. It happened right in the board offices in Ottawa. Among our membership, as we were phoning people to come out to this hearing, we uncovered the cases of five members whom we did not realize had taken their own lives in the last few months because the conditions under workers' compensation were so bad.

Back in 1915 when the government was trying to come to grips with this problem, Mr. Justice Meredith stated quite clearly—and it is in the back of our brief—that what we are trying to do here is give some kind of security to people who have been hurt on the job. This legislation is doing exactly the opposite. What you are doing with this legislation is abolishing the permanent pension and you are essentially condemning thousands of workers to welfare.

We all know that the welfare system in Ontario needs a lot of repair. Even Conrad Black, who represents big business, has said he wants to see some kind of guaranteed income. We are saying that is fine; we agree with it 100 per cent. But do not forget, all of the people we represent are people who have, with their sweat and blood, worked to build up the society, to make these buildings, to build the subways, to make Ontario the richest province in Canada.

We have one of the best standards of living in the world, but we are forgetting the people who, through no fault of their own, because of bad safety or because of some unfortunate situation, are injured and then are thrown on to the scrap heap of society. This is not fair.

The Catholic bishops of Canada and Ontario have stated that in order to have self-esteem and in order to be able to cope with life, people have to have job security. If people do not have job security, then we must give them a replacement for this, no matter what the cost. Believe me, if there is a political will, there is a way to achieve this. Bill 162 does not do that. It is removing the chance of giving some kind of justice to injured workers and shifting the responsibility to other jurisdictions, whether it be the Canada pension plan or social assistance through welfare.

This is not a just and fair gift to give the workers of Ontario who have worked, along with yourselves and along with the people of Ontario, to build an exemplary society. Can we not have the heart, can we not have enough understanding, to give these people justice once and for all?

Do not worry about what Saskatchewan has done, because, as we will point out later today, the Saskatchewan model is not the model that we want to see. Do not worry about what Quebec has done, because the Quebec model is also flawed. We have the resources in Ontario to build a law which would stand throughout history as a great model for all of North America and all of the world. Why do we not take this up in our hands and do it? We cannot do it through Bill 162.

I am going to cut my comments short because we do have quite a full agenda this afternoon and I want to make sure that everybody gets an opportunity, particularly the injured workers who want to express very strongly their feelings about how they have been treated. However, first of all I want to introduce Brother Don Roy of the Provincial Federation of Ontario Firefighters. This is an organization representing 31 fire departments throughout Ontario and he wants to present a petition to the committee.

Mr. Roy: Honourable committee members, we, the firefighters of Ontario, care about all injured workers. We protest the Minister of Labour's proposal to Bill 162. We feel these take away the rights of the injured workers, rather than responding to the genuine needs of these workers, and in our case, a lot of widows. Workers who are killed and injured in the performance of their duties at work deserve greater consideration than this.

On behalf of the members of the Provincial Federation of Ontario Firefighters, I present to you this signed petition. The members respectfully request that Bill 162 be totally withdrawn. An analysis of the proposed amendments has been undertaken and the incontrovertible conclusion is that the changes will not benefit these dedicated professionals. Benefits will actually be reduced. Many of these professionals put their lives on the line every day and we expect a little consideration from our government and from our employers. Bill 162 does not address this.

We thank you for receiving this petition. Once again, I urge the committee to recommend to the Legislature that it withdraw Bill 162. Thank you for your consideration.

Mr. Chairman: Thank you. The clerk will receive the petition on behalf of the committee.

Mr. Biggin: Before we continue, I would like to bring up one point. Many of you were a little bit shocked and offended when the injured workers demonstrated quite angrily on October 19. In spite of anything the Minister of Labour (Mr. Sorbara) has said, our organization did not plan that. We did not even have a scenario that included that, but the injured workers were so

determined and so annoyed that the minister was not going to give public hearings that they were forced to show their anger.

I would point out to you that whatever you think of that kind of activity—and this is a democracy; there are many ways of expression in a democracy—the decision for public hearings happened very soon after that particular fact. Let's hope we do not have to go to those extremes in the future.

I am essentially pleading with you and talking to you honestly. We really want change and we are willing to work with you, along with everybody else, to make a good bill. Bill 162 is not it. You are going to hear this throughout the day from everybody who presents and I am sure you are going to hear it around the province. It is something you should start to think about because these are the people of Ontario who are speaking to you, and you, as the elected representatives, have to be responsive to these people. Otherwise, we are going to create a cynicism among our people, and the more cynicism there is, the more disruption, the more demonstration. We can work out a situation by putting our heads together.

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We have brought before this meeting today some of the people who have worked closest with the injured workers over the last 15 years, as I have said, and we have given much thought to this. We are not trying to provoke you; we want to challenge you. Let's open up our minds and develop a system that works.

Ms. Endicott: In Bill 162, the Minister of Labour is promising us something. He is promising to improve the situation of injured workers at no cost to the employers of Ontario. As we heard from the guests from Quebec this morning, this is a magic trick. Since we do not believe in magic, it only comes down to one thing, and that is a trick.

I would like to show you why this is. It is our submission that there is no such thing as the overcompensated injured worker. For clarification, who is the overcompensated worker in Mr. Sorbara's mind? It is the worker who, with a pension, is able to return to work at apparently no loss of income. That is the overcompensated worker, and we say he or she does not exist.

In our appendices to our brief, appendix 1 is one of the many studies that Mr. Sorbara refers to that has been done in the last 10 years. It is one I have not heard him refer to. If you would like to turn to it, I would just like to point out a couple of points in it. Have you found the study, tab 1 in the appendices?

If you look at page 4 of this study, you will see that of the injured workers who have a permanent disability, only 56.8 per cent of them manage to return to full-time employment. You will see that 39.5 per cent—we can round that up to 40 per cent—remain unemployed.

On that same page 4, if you look at table 3, the percentage of the average disability award given to people who are in full-time employment, you will see that the percentage is 14.4 per cent. That is the average disability pension we are looking at.

Look at the next column, the average wage loss suffered by these people who return to work, 13.4 per cent. We are talking about a one per cent

overcompensation in the province of Ontario. If the minister thinks he can generate the funds from one per cent to pay for those 40 per cent who are left unemployed, I do not know, he does have a magic trick up his sleeve and we would like to know about it.

On the next page, table 4, you see the ages of injured workers who have permanent disability. If you look again at the column of the people who are full-time—we are looking at people who have gone back to work here, not the people who are unemployed, which are the rather large numbers in the other column—who do we see? We see it is just some of the younger injured workers who manage to get back to work and who end up earning more wages than before their accidents.

This is simple. When young workers get injured, they are not anywhere near their earning capacity, and even after an injury, they have many years to work on restoration of that earning capacity. Anybody who is over the age of 39 suffers an average loss-of-earnings impairment on top of the pension in Ontario.

Has Mr. Sorbara showed you this study?

On the next page, we see table V. Again, look at the workers who are employed full-time. If you look at this, you see it draws a line under the figure—unfortunately it is cut off at the edge here—of 29.9 per cent. Injured workers who have a disability of over 30 per cent: If you have represented injured workers, you will know we are talking about very disabled people if we are talking about people with a more than 30 per cent pension. Look at that figure. It is at that point, workers with over 30 per cent pension, that we begin to see a bit of a so-called disparity between the pension that is awarded and the wage loss they have, indicating that they are able to earn more than the pension award would suggest.

Again, what do we see? These are the very severely injured who are managing to do this. Look how many there are. Just look at the figure: 69 people with a pension of 30 per cent to 40 per cent are employed full-time. On the other hand, 224 people in the same survey with that same rating are completely unemployed. We have 10 people with 100 per cent disability pension who have returned to work successfully at simply a 40 per cent wage loss; we have 110 at 100 per cent disability who are completely unemployed. We are talking about very few injured workers who have managed to return to work and earn more than they did before.

What do we say about these people? Who are these people? They are the people without an arm. They are the people without a leg. They are the people who are blind. They are the people who are in wheelchairs. I do not think any of us would say that we begrudge that money to those people.

Back in 1950, the Ontario government commissioned a study of the workers' compensation system. It was handled by a Mr. Justice Roach. He came out with a report. This is what he had to say about workers with these kinds of disabilities who manage to get back to work:

If the partially handicapped workman has the courage, resolution and fortitude to overcome his disability to the point that his earning capacity is not, at least for the time being, adversely affected thereby in my respectful opinion it would be neither economically or socially sound to take from him the benefits of his own successful efforts to rehabilitate himself. His own

morale is a matter of importance not only to himself, but to all those with whom he associates including his employer."

That is what Justice Roach had to say about it. That is what we would say about it too. These people deserve the pension they receive. We think it is a shame that in Ontario, the richest province in Canada, we should talk about taking that money away from these severely injured workers in order to pay the so-called undercompensated injured workers; well, not so-called, because for sure they do exist.

Finally, I would just like to point out to you on this question that even for those who seem not to have a wage loss, we would submit to you that in fact they do have a wage loss. They have to pay for other things in their lives that the board does not pay for. They have to make special arrangements when they go on vacation. They have to buy a special car or car seat. They have a lot of arrangements in their lives, some of which would be paid for by the board, especially if we are talking about somebody who is 100 per cent disabled, but many which are not paid for by the board.

These costs in life eat into the wages the injured worker is making, thereby essentially reducing their wages. Most of these people you will find are unable to work overtime. Many workers in Ontario essentially depend on overtime work in order to generate the funds for living, and you will find that most of them did a significant amount of overtime work before they were injured. You will, I think, find in 99.9 per cent of the cases where these people have returned to work that they are unable to engage in overtime work any more. They must rest in order to simply get back to work the next day.

Especially in the case of younger workers, they are not able to pursue their pre-accident potential. Who knows what they might have done if they had not been injured? We can only guess at that. Certainly, there is a loss of opportunity for promotion, even within the worker's own work area. Once there is a disability, they are not the same hard-working people they used to be—they cannot be—and they lose those opportunities. Even when we look at wages that are higher than pre-accident wages, they are not really higher wages. There are many, many losses there.

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I have a couple of other points on that. Many times, I think you know, injured workers are the first to be fired, the last to be hired. Any time there is a layoff situation, those injured workers are going to be off work for a much longer period of time. Once again, it is there the pension helps to cover that economic loss experienced, a greater loss than their co-workers experience.

Also, there are many times the injured worker will have to take a day, a week, even a month, and in some cases we have seen six months to a year, off work due to a worsening of his condition. Many times—we have seen this at our office frequently—the worsening of the condition is not recognized by the board and the worker must rely on his pension to carry him through that time.

I have just been passed a note here pointing out that they also lose their vacation pay during these times they are laid off and what not. They really do not build up vacation time in the same way other workers do, and there is a loss there as well.

Given this concept that there really is no overcompensated worker, and

looking at the hard statistics generated by the board itself that there really is no overcompensated worker—on the average, at least—how will the system maintain its cost neutrality? We will tell you how. It will do it by pretending there is no wage loss by injured workers. This will be accomplished—I think you know how—through deeming.

I would now like to address myself to the question of deeming. You know that the Workers' Compensation Board currently employs deeming under subsection 45(5) of the act and that this results in no supplements being paid to workers, workers who are unemployed and looking for work, workers who are in need of rehabilitation. They are not getting them because of this deeming process.

In our appendix, under tab 4, we have appended some examples from the board's current deeming process. I will not spend long on them, but I would just like to point out a couple of them.

In the first one, we have a pensions adjudicator who writes to the injured worker saying that he has been in contact with the rehab counsellor, and between the two of them they have decided that this worker could work in bookkeeping, retail sales or as a receptionist. They then calculated the earnings the person could make on the basis of those jobs, came up with \$330 a week and deemed that to be the person's post-accident earnings. This worker was making less money than that before the injury. So now we have another magic trick. Get injured and you can earn more. We wonder, should this worker pay the board back?

In the next example, we have a worker who was deemed to be able to be a refrigerator repair person. This was a case from our office and we know that what happened was that in a discussion with the rehab counsellor, it was discovered that on his own initiative he had taken a refrigerator repair course. He was only halfway through the course at the point he was deemed. The wages that were assigned to him were the same as his pre-accident wages. So he ends up with nothing. The man had never repaired a refrigerator in his life.

In the third one, we have a worker who was working part time before she got injured, and after the accident the board decided, "Well, all we have to do in your situation—anybody can get a job at minimum wage—is multiply minimum wage by 40 hours a week." It turns out again as: "More money than you made before your accident. We do not owe you anything. You should pay us." They did not say that, but that is what it amounts to.

This case of looking at the minimum wage underlies the philosophy that is being used in deeming. They do not really care about what job the worker can do. That is not important. What is important is what wage figure they can come up with in order to do the deeming process, the deeming process Bill 162 calls for.

I can tell you now that to put out the thought that anybody can get a job with minimum wage will translate, in Bill 162, to just about every single injured worker who passes through the board's offices, except for those who are, I suppose, completely and utterly hospital-ridden. Even they, presumably, could do something at minimum wage.

How does this translate to Bill 162? If you can turn to your copy of the bill and look at the provisions for the deeming system under section 45a of the act, we see that the first necessity in deeming is to look at the actual wage information of the injured worker. This is the only concrete piece of

information Bill 162 asks us to look at in terms of figuring out what the estimated wage loss will be for this worker.

Do you know that in subsection 45(5) it tells the board to look at only pre-accident earnings and post-accident earnings? It does not even give the board the possibility of looking at all this other information about whether you are taking a refrigerator repair course or whether you might be able to work at minimum wage. The stipulation there is only to make a direct comparison, and even there the board ignores that piece of information. We can imagine that under Bill 162 the actual earnings of the injured worker are just one minor point to be taken into consideration.

What is the second point? The second point is that they are to take into consideration disability payments under the Canada pension plan. Well, it is certainly perverse to consider as earnings payments a worker receives as a result of total disability for the purposes of estimating his wage loss. It is simply incorrect.

Perhaps what is meant by this is that it should be a factor taken into consideration in order to make the determination that the worker is actually totally disabled. We do not know. Bill 162 does not tell us what to do with that piece of information about Canada pension. It does not tell us whether it should say the worker is totally disabled and therefore will receive a full wage loss or to subtract the amount of Canada pension from what he is going to get. I presume it is that, because that is what the board does now, but Bill 162 does not tell us. We could read it either way.

Then what do we have? "The prospects for successful medical and vocational rehabilitation." This one I would really like to draw your attention to. Given the system to cut off temporary total disability benefits at one year, do you realize what this means? This means that a worker with good prospects for vocational rehabilitation could be deemed to have no estimated future wage loss at one year. If they are deemed to have no estimated future wage loss, they will not receive rehabilitation; they will not receive a supplement. You cannot supplement zero impairment of earning capacity. Okay?

I am sure it was not intended to say that, but that kind of problem is in here. The bill is riddled with this kind of poor language, and every time the effect of the language is to cut out benefits in a major way from injured workers. Perhaps it was intended. Again, we do not know, because it has never been explained. But look at that hard. We are really talking about any worker who has good prospects being cut off one year post-accident, bye-bye, no more obligations from the board.

What do we get next? "Such other factors as may be prescribed in the regulations." All I can say there is we shudder to think what the board might put in. We do not want it to be left up to the imagination of the current administrators at the Workers' Compensation Board as to what they might use in deeming.

I would just like to make two points about deeming, other than this, before I turn the microphone over to our guest from Saskatchewan. The first is that deeming is going to hurt the workers of Ontario who have low wages the most. Anybody who has a philosophy that just about anybody can get a job at minimum wage—there are a lot of jobs that are available at lower wages. It is

pretty easy to find a job that you probably could do. They are the ones who are going to lose. It is going to be so easy to deem them.

We noted in other jurisdictions as well that it is the people with higher wages, the good wage earners, who end up with a little bit of a wage-loss payment, maybe. It certainly does not always work that way, but the low earners are pretty well always cut off.

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The other thing it is important for you to realize is what a negative effect on rehabilitation the deeming has. I have already pointed out that by the very wording of the legislation, somebody could be simply cut off one year after his accident and have absolutely no access to any other benefits from the board at that point, but in addition to that, what happens is that the worker who puts his best foot forward, the worker who tries to say: "Yes, I can beat this disability. I want to try this. I want to do my best," is the worker for whom the board then decides: "Gee, this person is not going to do so badly. He is going to do okay," and deems him at a higher wage than it might otherwise.

As a result, if the worker is not successful in getting that employment—his sights were set too high; the job is not there—nevertheless, due to his enthusiasm, he will be deemed at those wages and be left high and dry.

There was one case where the worker was so positive about himself that the board simply sent him off for one of these assessments. The assessment centre noted this man's positive attitude and thought he would really be a great salesperson. As a salesperson, his wages were deemed, again, to be higher than what he made before the accident. He was provided with no further assistance from the board.

So it has a very negative effect on rehabilitation. It makes workers very conservative. They are afraid. They are entering a whole new world, a whole new life, a life with a disability. They do not know what lies in the future. At least they want financial security. If their financial security rests on being deemed at low wages, they are going to aim for low wages. I do not think that is in the interests of the industry of Ontario, the injured workers of Ontario or the board.

I would now like to call on Donald O'Connor, who is the president of the Saskatchewan Injured Workers Association. He will be telling you about the situation in Saskatchewan. Once again, he will be discussing the effect of deeming and other matters that I am sure you will be interested in hearing about.

Mr. O'Connor: As you can see, being disabled puts you in an awkward position, so I will be talking to something around over here and I hope you can all hear me.

Mr. Chairman, ladies and gentlemen of the review, I would like to introduce myself to you and give you the reasons I am here today. My name is Donald O'Connor. I am from Regina, Saskatchewan. In October 1981, I suffered a severe work-related accident that left me a paraplegic. Because this accident happened in a workplace, I was considered eligible for Saskatchewan workers' compensation.

I am also a member and president of the Saskatchewan Injured Workers Association. We are a voluntary association of injured workers dedicated to ensuring fair and equal treatment and settlement of injured workers' claims with the Saskatchewan Workers' Compensation Board. Our association is made up of injured workers who have been unfairly treated by the Workers' Compensation Board. At this time, we have 13 branches of our association, with over 1,000 members. As a result of my injury and my long involvement with the association, I am well acquainted with the operations of the Saskatchewan Workers' Compensation Board.

The question is, though, why am I here today? My first reaction to this review was one of surprise. I was not only surprised but astonished by the thought that the government of Ontario wanted to even talk about introducing a wage-loss system of compensation similar to that which is now in effect in Saskatchewan. Our view, and the view of others in Saskatchewan, can be summed up by Terence Ison of York University in his report entitled National Perspective on Workers' Compensation Appeals, in which he states, "The wage-loss system of compensation only tends to increase the range of controversies and to invite their recurrence, and this cannot be mitigated by any efficiency in administration."

The net result of a wage-loss system of compensation is an increase in the board's portfolio at the expense of the injured workers. Why would our association and other individuals hold this belief? There are two important facts that must be put forward first.

First, Sir William Meredith envisioned the act to be a legislative collective agreement between employers and employees whereby the workers are compensated for a loss resulting from injury or disability arising out of and in the course of employment. The compensation fund is to be maintained solely by the employers through premiums assessed by the workers' compensation boards. Compensation is payable regardless of whether the injury or disability giving rise to the loss was caused by the fault of the employer, the worker or a co-worker. Consequently, the agreement prevents lawsuits by workers against their employers and/or co-workers. The system therefore would be simple and easy for everyone to understand and administer.

Second, it is our view, and I believe it is a commonly held view, that the costs of compensation in Canada are paid by the worker, either indirectly from his wage settlements or from the goods that he or she buys. We believe that Mr. Paul Weiler, one of the architects of the compensation system in Ontario, analysed the situation well when he stated: "In the final analysis I believe that compensation benefits are paid for not by capital but primarily by labour: both as consumers of higher-priced goods and as wage earners in an industry faced with increasing labour costs in a competitive world....worker's compensation is a vehicle through which able-bodied workers share their income with their disabled fellows." So in analysing this section we can, I think without doubt, conclude that the compensation systems in Canada are made for injured workers and are solely funded by able-bodied and injured workers, not the employer. These facts must be the basis on which any changes to the act are proposed.

In Saskatchewan we had a pension system of compensation until 1980. The pension system, although not perfect, was fair, simple and, above all, understandable to all. But in the late 1970s a new theory was proposed: a wage-loss theory similar to the one proposed by this government. The philosophy behind this theory was a good one: that an employee who was injured on the job would receive 75 per cent of his gross income; since 1985 it is 90

per cent of net income, which is approximately 65 per cent of gross, which is 10 per cent less now; the best physical and vocational rehabilitation programs available; and a wage-loss differential between what he was earning compared to what he actually is earning as a wage. Does this not sound similar to the system of compensation now proposed by this Ontario government? There is only one major problem with this philosophy and theory: it is just that—a philosophy and a theory, not reality.

The reality is the Saskatchewan system of compensation. We had in Saskatchewan for 30 years a pension system which was simple, understandable and easy to administer, but overnight we were faced with an entirely new system of compensation, that being a wage-loss system. What then were the consequences of this new system on the board and, in particular, on injured workers?

The board in Saskatchewan was not prepared or trained for this new philosophy. Frankly, under the new system it did not know how to handle an injury claim. The introduction of this new act placed great strain on the resources of the board. The change in emphasis from a physical disability pension to a loss of income meant a requirement for major policy development and administrative reorganization in an organization which had not seen change in nearly 50 years.

The sudden explosion of new issues and problems created an information overload. The organization found it difficult to both respond to the new concerns and conduct its traditional duties. What were these policy and administrative reorganizations? In 1982, after two years of the new system, the government of Saskatchewan established a review committee to evaluate the new system and to make recommendations for change. This committee was made up of organized labour with an employer as the chairman. We are not as fortunate as the injured workers are here, to have government representatives looking the system over now.

Early in the course of the inquiry the committee became convinced that the system was not doing what it was intended to do and therefore set forth a number of recommendations. The recommendations were:

"That the government of Saskatchewan construct a completely new rehabilitation facility to meet the needs of our injured residents;

"That the number of counsellors of the rehabilitation branch be increased until the case load ratios are reduced to a level of 50 to 1;

"That the Workers' Compensation Board undertake a complete review of the policies and procedures of the rehabilitation branch to bring them into line with a philosophy of rehabilitation which is consistent with the Workers' Compensation Act of 1979;

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"That the Workers' Compensation Board review their administration practices and procedures with a view to establishing a long-term relationship between the rehabilitation counsellor and the worker;

"Subject to an appeal through the adjudication mechanism, that the rehabilitation counsellor will be responsible for estimating the worker's earning capacity after an injury has stabilized. And"—the most important

part—"that this deeming responsibility be used with discretion, with both intelligence and compassion;

"That a career consultant be employed by the rehabilitation branch of the Workers' Compensation Board to provide technical assistance to the rehabilitation counsellor;

"That the rehab department begin to develop committees of employers and employees to serve industry in Saskatchewan, the goal of which is to aid injured workers to find suitable employment, subject to the philosophy of the 1979 act;

"That there be a clear distinction between the roles of adjudication and administration within the board;

"That a research and education group be established within the Workers' Compensation Board;

"That the Workers' Compensation Act be significantly reorganized, with the goal of making its provisions understandable to the public and injured workers."

The committee of review relied heavily on submissions made to it by employers, employee groups and by injured workers. Out of those hearings, besides the recommendations of the review committee, emerged two important issues.

One issue was rehabilitation of injured workers. Management and labour groups, as well as injured workers, urged the committee on the need for a greater, improved and expanded rehabilitation program. The vast majority of workers who appeared before them expressed a strong desire for rehabilitation programs which would enable them to return to productive employment.

The second issue was that of deeming. The review committee stated:

"One of the most difficult tasks which the board faces in the administration of the new act is trying to establish how much of an earnings loss was, indeed, caused by the injury.... In trying to come to grips with this problem, the Legislature established a simple test. The compensation should be based on the difference between what the individual was earning prior to the injury and what the individual is 'estimated to be capable of earning at a suitable occupation.' This section placed a great deal of responsibility on the board. This power must be handled carefully and responsibly....

"In the course of our hearings, the committee received a number of representatives about this aspect of the act and feels compelled to make some statements about the issue. First, we believe that the idea of a suitable occupation means just that. The occupation should be one in which the worker has a legitimate expectation of being employed. This should mean that the worker has the qualifications and the capabilities to do the job. It should be an occupation for which there is reasonable expectation of employment for workers in general. It should recognize the geographic situation of the worker. It should be combined, when used, with a serious effort at rehabilitation.

"The committee was not, however, able to suggest any change in wording or similar change to the degree of discretion allowed. At some point or other

discretion must be built into every act. This is reasonable and sensible. We can only trust that the administrators of the act will use this discretion with both intelligence and compassion."

The workers' compensation review committee in 1982 did report and did submit recommendations to the government. Some of those recommendations were acted upon; others were not.

As was the case of the 1982 committee, the 1986 committee felt a special responsibility to ascertain whether or not the new system was working to the satisfaction of both employers and employees.

Early on in the review, it became evident to the committee that certain concerns expressed at the hearings were duplications of those at the 1982 Workers' Compensation Act review committee; in particular, the areas of deeming and rehabilitation.

The specific comments of workers regarding the way in which these sections of the act were being implemented and applied may be summarized as follows: that workers are being deemed by the board to be capable of engaging in work for which they are not qualified without first being given appropriate training; that workers are being deemed by the board to be capable of obtaining employment at rates of pay that are unrealistic, having regard to the ongoing rates for the jobs in question; that workers are being deemed by the board to be capable of obtaining work in fields of employment in which job opportunities do not exist.

The position of these workers is that by deeming them capable of earning income which they say they are not in fact capable of earning, the board is wrongfully reducing or, in some cases, cutting off altogether the income maintenance benefit which the 1979 legislation was supposed to guarantee them.

The principle of income maintenance is, of course, the cornerstone of Saskatchewan's post-1979 system of compensation. If the income maintenance sections of the act are not being fairly and properly interpreted, the entire structure of workers' compensation is in danger of collapse. This makes deeming the most critical issued faced by the committee.

Because of the problems with deeming, and there were many, the 1986 review committee decided to return to the original intent of the 1979 legislation; that is, to return to the principle on which the estimation of the effect of the injury of loss of earnings capacity resulting from the injury was based and that the responsibility of the board is to replace any income loss which occurs as a result of the injury. Only when it can be demonstrably justified that the income loss is not due to the injury can deeming be seen as a reasonable proxy for income loss.

The committee made two major recommendations to ensure that deeming would be done with intelligence and compassion. A copy of this is in the 1986 review. I do not think it is necessary for me to go into it.

The second area of concern was that of rehabilitation. The 1982 committee outlined a philosophy of rehabilitation and developed an approach for its implementation. Seven years later, the board is no closer to what the committee considered an effective system of rehabilitation than we had a decade ago. Therefore, the committee made 17 more recommendations concerning rehabilitation, and they are outlined in this review.

I ask that this committee review the 1982 and the 1986 review committee reports and see what a wage-loss system will bring to injured workers.

What has been done since this 1986 report? As in the case of the 1982 review committee report, the same concerns were prevalent. Although both reports made references to areas of real concern voiced by injured workers and employers, there has been no progress in implementing meaningful legislation and regulations that would curb the misuse of the act by the Workers' Compensation Board.

All that has come from these recommendations is a new rehabilitation centre, which is understaffed and poorly organized. We believe that the record of the Workers' Compensation Board in regard to rehabilitation, meaning physical and vocational, is horrendous and we believe that it will never change.

We know in fact that there are still multitudes of injured workers who have and will have problems with the decisions rendered by the board in Saskatchewan.

It is fine for me to restate recommendations and thoughts on the wage-loss system, but what is the bottom line, so to speak?

The bottom line is that since the wage-loss system has come into effect, the number of appeals has risen from 219 in 1982 to 666 in 1986. The workers' advocate office has a case load of 200 to 300 per employee, with a waiting period of three to six months. On the first appeal, an injured worker goes there and they tell them: "Send your appeal in. If you get denied, come back and see us." Our case load since 1984 has risen to almost 300 a year.

The number of injured workers in the province has gone down since 1982 to a point of approximately 36,000 injured workers a year, but only 17,000 have any time loss. The average length of time an injured worker with a permanent or temporary functional impairment is on compensation is anywhere from six months to 28 months, and that includes education.

The actual compensation paid has gone down every year since 1983 from \$96 million to \$75 million, but the administration costs have gone up in the same period, from \$11 million in 1983 to \$14 million in 1986. Premiums have risen also, from \$60 million in 1983 to \$72 million in 1986. In 1983, the board spent on administration \$11.99 per \$100 in benefits. In 1987, the board spent \$18.77 on administration per \$100 in benefits. The board has increased its investment portfolio from \$284 million in 1982 to \$345 million in 1987. The staff at the board has risen from 227 in 1982 to over 250 in 1986. The assessment rates have gone up from \$1.22 in 1982 to \$1.37 in 1986. The board has also introduced a three-year surcharge on employers.

What is this telling you? It is telling you that under a wage-loss system of compensation, the system becomes complicated to administer. It increases the number of appeals. It causes greatest hardship for injured workers and employers. The only one who wins under a wage-loss system of compensation is the compensation board, to the tune of \$345 million.

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You have as a review committee a choice. It is a very, very, very important choice. You can implement a system where the only winner is the board and the losers are the injured workers, or you can implement a system of

compensation that would reflect the true spirit of compensation, that is, to fairly compensate an injured worker for the injury he has received and give him the opportunity to become a productive member of society with the security of knowing that if he has a problem after his injury, the board is there to assist him in any way it can with intelligence and compassion.

Mr. Chairman: Mr. O'Connor, we thank you very much for the brief and for coming from Saskatchewan. At the beginning of your remarks, the Hansard machinery which records all of the presentations was stuck. We do not know why, but it got stuck and I wonder if we could have a copy of your remarks so we make sure we have them in their entirety. Thank you.

Mr. O'Connor: Gentlemen, I think at this time it would be important that I show you just some of the decisions that have been made by the board to emphasize what the problem is. These are just a few. Back in Saskatchewan we have files full of them. They are basically all the same, so for each one I give you, just multiply it by 100 or any figure over 50 and you are going to come close to it.

This one is a nurse. She was a registered nurse and she worked in Moose Jaw, Saskatchewan. She was lifting a patient one day and she injured her back, ruptured some discs. The board compensated her for a while. She went for rehabilitation. It was determined that she could never go back to what she was doing. She came up with the idea, and she met with us and told us that what she would do is maybe take a couple of classes at university to increase her chances for becoming supervisory staff at the hospital. The board turned around and said: "You're a nurse. You're an RN. You have education. There must be something you can do out there." They terminated her from the program.

She kept having more problems. She could not get any work, so she contacted the board. She got a claims counsellor there. She explained the situation to him, the plight she was in. She could not go back to her work. Her employer would not hire her back. The only work she knew was in that field. Her claims counsellor told her that the board's decision was: "You are capable of some type of employment. We are not an employment agency. All we determine is whether or not you can work and we feel that you can work." "We feel": In Saskatchewan, the Workers' Compensation Board feels a lot of claimants, let me tell you.

But to show you the mentality of what these people are under and the strain these claims counsellors are under at the Workers' Compensation Board, he told her he was so sick of this, that he said: "Look. As a woman, you know how women can make money, so don't bother me any more."

We got a journeyman plumber, 62 years old, who got injured on the job. He never would be able to go back; he injured his back severely. He was making about \$14 an hour. The board estimated that he could earn \$9 an hour. No retraining because he is an old man now; they cannot retrain him. They estimated his earnings at \$9 an hour. Now what is he making? Then they turned around a little later on, a year and a half later, and they estimated his earnings to be \$1,700 a month, so it left him with a replacement of \$582 a month from the board. But they knew he was going to retire soon because at 65 he would get a pension, so he would be okay. "We do not have to worry about him."

We have a gentleman who was working in construction. He fell and he fractured the upper left femur. The doctors said he could never return to what he was doing before, so he was trained in one of the board's great

occupations—boilerman. In Saskatchewan, for all the boilermen who are unemployed and for all the boilermen the board has trained—in Regina alone, we have a small population of 150,000 people—we would have to have two boilers on every block to accommodate all these people.

Interjection: Why do they send them to the boiler room?

Mr. O'Connor: Boilerman is a nice course. It is six months, really quick—bang, you're out. It is six months or seven months of rehab or convalescing, six months of retraining and you are capable of making what you were making before. That is exactly what happened to him. What they did is they said, "We'll give you what is called wage-loss assistance."

What they did was pay him wage-loss assistance because what he was making before was less than what he was making now. But then they turned around and they sent him a letter in the mail stating: "We believe that now you should be able to get your third-class boilerman's pay. We believe you should have it. Therefore, we're going to deem you at that rate and we don't owe you a dime." The only problem is that at the boiler where he was working, he could never write for his third-class ticket, so we appealed that and the board extended it for another year. They gave him another year's extension on it before they terminated full benefits.

I have another one. These are all different ages, so they are a cross-section. He was a young man. He fell and he fractured his hip and broke his leg at the airport when they were doing construction there. He went for therapy and rehabilitation. He really wanted to go back as an industrial carpenter because he liked doing it, so he went and he manufactured himself a belt that he could carry all his tools on, and it went over across his shoulder so he could work. So he went back to work. The board was really happy with that, seeing him go back to work.

He got back to work and he kept having more and more problems with his back and he started taking more and more painkillers—and there was his hip and his leg. He was taking so many painkillers that finally one day he just about fell off a scaffold at the Co-op upgrader, about 30 feet, so he quit. He asked the board and the board said: "No, you were capable of doing the job. You're still capable of working."

We fought that and we won, but do you know what we won? He was making \$23 an hour. The board turned around and deemed him to make \$7. All the doctors' reports in his appeal say he is not capable of ever going back to being an industrial carpenter or anything associated with it—no heavy lifting. The board says, "But we know he could get a job for \$7 an hour somewhere." Now we have to fight that one, and that one took eight months.

We have another woman, who suffered another back and leg injury. Ninety per cent of the problems we have are backs. Every one of her physicians says that all she needs is at least four months of good physical therapy and she will be fine, but the board said that in its opinion she was capable of going back to work; with or without any therapy, she was capable. Besides that, she happened to have a degenerative condition. She happened to have a little bit of arthritis in her back and that was causing her inability to return back to work. It was not the injury but the arthritis.

We have a gentleman who was a welder, who fell from a scaffolding while working up at the Nipawin dam. He injured his back. His was a really sad story because we worked with him to try to get him rehabilitation. The board

accepted the problem and we tried on three occasions to get the board to go for a retraining program. Each time we had it set up, the board took its time approving it and we missed it, so we had to get it all set up again. Any courses that you are going to take—you know how they work—they start late or start early.

So after two and a half years of messing around with these people, they finally came to us one day and said, "We feel that he's capable of returning to work at something." They deemed him at full wages, \$34 an hour, what he was making before as a welder. After two and a half years they deemed him, with no retraining, nothing. So then we had to fight that decision.

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The board, of course, then realized that it had made a mistake and said, "Okay, we will deem that he can only make..." and paid him what was \$10 an hour. That is what they gave him out of the amount of money. They deemed him for the rest, so we are fighting that one. It just goes on and on.

We have another gentleman here. He has 15 doctors who all state the same thing, that he cannot return to what he was doing before, yet the board said he was capable of working. He was taking painkillers, so many that he ended up with perforated ulcers. The board compensated him for the three weeks he was in the hospital because it said it was work-related, but the minute he was out of the hospital, it terminated benefits because it said he was fit for work. Yet all the doctors are saying he is not.

I could go on and on. I have a 17-page appeal of a man. In here, the board believes that occasional work is more sedentary than physiotherapy. They will not give him that. All the doctors' reports state that he cannot return to what he was doing, yet they deemed him at \$6.70 an hour. It is 17 pages of doctors' documents. Even their own board doctors, the ones the board determines, state that, yet, "No way." Now we are appealing that decision.

It has got to the point in Saskatchewan that what we have to do with a claimant when we first get him is send him, number one, for a psychiatric evaluation. If everything else fails for deeming, the board will say: "His problem really is not physical; it is psychological. That is why he cannot recover." It goes on and on.

In my case, it is very simple. I was hurt in October 1981. In February 1983, I was sent a letter by the board in which it said I was capable of returning to work. I was still taking physiotherapy and everything else. I had 2,500 pounds of steel fall on my back. It hit me at 45 miles an hour. It paralysed me from T-12 down. After I appealed the decision, the board sent a letter back saying: "Oh, we are quite sorry. It went out in error." Then I found out from other injured workers, and I looked at the letters from other ones when I got involved with this association, and all that was changed on the letter was my name and the person who sent it. The middle part of termination was like a form letter that you get in the mail.

So, it is an automatic thing: "Don't let them go any more than 18 months if you can, because if you do, after 24 months, in our legislation, we have to set up what is called a pension system or an annuity. But if you can terminate them before the 18 months, then we do not have to do that, and that saves us more money." They are constantly looking for a way out.

We are trying to work within the system. In the last review commission,

there were members from the Canadian Labour Congress on the review commission; there was a past workers' advocate; there was a nurses' union on it; there were employers. The conversations that took place in the last review commission in 1986 were conversations where they brought up the thought that maybe we should just scrap this whole system, go back to a pension system and start again. But the cost again is that the board will never let that happen. The board has the control. They are the ones with the power. They are the ones that control it and they will make the decisions.

You say: "Those review committees in 1982 and 1986 sent those recommendations in. They have to abide by them." No, they do not. You know what the word "recommendation" means; it means to recommend, not to implement. So what do they do? They only change the legislation that requires it, like delete a section that needs deletion or add a few words that are needed. That is what they do.

When it comes to the policy of the board, as the Minister of Labour in Saskatchewan told us in a meeting with him, "We send them to the board and then they do a cost analysis"—key word, "cost,"—"whether or not they are going to implement them." So it all boils down to who is paying for the system. It is the injured worker. In Saskatchewan, we will keep paying until they get rid of it or do something about it. At the rate they are going now, it is going to be a long, long fight and a long, long time.

You people have a choice. You have a good opportunity now. If you are going to implement this system—and there is no doubt in my mind that it seems you are going to—then do it right. Get lots of input, and I mean from everybody you can. If you want to see what is going to happen with this compensation system in Ontario if you implement this legislation the way it is, you think you have appeals now? You think you have problems now? You wait five years. You wait.

Thank you very much for listening to me. If you have any questions, I will be glad to answer.

Mr. Chairman: I am leaving that in your hands, really. Is that what you wanted, Mr. Biggin?

Mr. Biggin: This has been an issue that has come up at hearing after hearing and one of the reasons we wanted to provide a witness from Saskatchewan is to give some information. I think the members of the standing committee should have the opportunity to question him right now.

Mr. Chairman: That is fine by us. The afternoon is yours. Mr. Wildman had a question.

Mr. Wildman: I would like to express our appreciation to the injured worker from Saskatchewan for coming to Toronto to appear before our committee. It seems to me, from your description of the situation in Saskatchewan, that not only the injured workers but just about everybody else involved with the system does not like it.

You may not be aware that just at noon today, this committee voted against travelling to Saskatchewan and other jurisdictions to learn about the effects of the wage-loss system, the dual award system, in other jurisdictions. The majority on the committee decided that we should not go to those jurisdictions. Do you think it would be useful for this committee not only to hear from individuals like you, the injured workers, but also labour

groups and employer groups in Saskatchewan before we implement this system in this province?

Mr. O'Connor: Definitely. There is no doubt; definitely. It has come to be known in Saskatchewan now. At first organized labour was reluctant to see the problem. They thought: "It can be repaired. We can keep working with it and finally we're going to get something." But they are coming to the realization now that the only way to curb it is: "We'll just forget about it. We'll let the board administer it, but we'll have an independent body review all the decisions and make the board live by it."

We semi-agreed with that, but we said: "Why don't you go one step farther? If the decisions the board is making are hurting injured workers, let them take it to court. Let them do that. Let the board defend its actions in a court." Then what will happen—at least in our estimation what will happen—is that with the lawsuits applied against the board and the amount it is going to have to pay, pretty soon the whole attitude down there is going to change to, "We'd better implement this act for the betterment of the injured workers so we don't have to end up in court."

I do not have to explain to you what can happen. In my case, I was at home in February and I had a claims counsellor come to my house. He was downstairs with my wife. My wife was asking him, "How can we renovate so he can have a bathroom?" and stuff like this. He turned to her and said, "Look, Mrs. O'Connor, we don't like to renovate homes for people like your husband. Frankly, after two years the spouse usually leaves, anyway, and we just waste our money."

Mr. Wildman: In other words, they are expecting your marriage to break up.

Mr. O'Connor: Definitely. This is my future with the Workers' Compensation Board. It is common knowledge. It happens to all of us out there. My claims counsellor told me specifically when we had a conversation that my future will be this; this is my future. In one letter in here, I will show you how the board determines your future. It is really quite interesting how it determines your future. It says: "We are currently in the preliminary stages in determining your possible future." "We are." Not, "in consultation with you" or any kind of thing. "We are currently in the preliminary stages in determining your possible future." That is what they said about a quadriplegic. That is the letter from the board, signed by the board.

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Mr. Wildman: In your estimation, if the wage-loss system were to work, could it only work if they got rid of deeming completely and actually dealt with actual wage loss—

Mr. O'Connor: Right.

Mr. Wildman: —and whether or not you have a job and what your income actually is?

Mr. O'Connor: Right. That is what you have to do. You cannot guess. No more guessing. The board likes to guess.

The biggest thing you have to understand is that you have given these

people down at the board a lot of power. No fooling around; you gave them a lot of power.

The Saskatchewan act, in subsection 22(2), states clearly, "The decisions and findings of the board under this act upon all questions of fact of law are final and conclusive and no proceedings by or before the board shall be prohibited by injunction or otherwise in any court." They also state that the board members are like unto Court of Queen's Bench judges and that they can send this power to anybody they feel. You have given these people an immense amount of power.

I will tell you, if I could convince the Saskatchewan government to give me that act, I could be a very, very rich man today, but there would sure be a lot of poor, poor people out there.

Mr. Wildman: Again, I thank you for coming.

Mr. Chairman, I would like to comment that I think it was most unfortunate that the Liberal majority on the committee decided not to visit Saskatchewan. The testimony before us from this gentleman right now indicates that we should be going to Saskatchewan to find out what is actually happening there rather than just taking the opinion of the Liberal government before we pass this legislation in Ontario.

Mr. O'Connor: I would like to say one more thing. In Saskatchewan, our chairman of the board did an article in what is called Saskatchewan Business Magazine. In there, he states that the Saskatchewan Workers' Compensation Board is one of the best administrated boards in Canada, and he is right. The problem is that there is a real distinction between administration—what I call administration is just money management—and implementation; a big difference of intelligence and compassion. That is what the 1982 committee said. That is what the 1986 committee said.

It has to be done with intelligence and compassion. This board is relying on the ignorance of injured workers. In Saskatchewan they rely on that. They rely on them not being smart about the act. What they do is have a system that is next to none and incorporate you into the act.

The minute you get hurt, they are there. They are making sure you get paid. They come over and talk to you. They isolate you. They get you at home. They say, "You should be convalescing at home for a while," so you are dependent on them. Then they come to you and say, "I'm going to try to get this for you," and all the time they are befriending you. Then, all of a sudden, 18 months later, they dump you like a hot rock.

They know there is not a damned thing you can do, because you do not have the expertise. So you are scrambling around wondering what you are going to do. "Where am I going to get an income? How am I going to feed my family?" You run to the welfare department. The welfare department says: "No. You have an injury. Your doctor says you can't work. Go back to the compensation board."

So you run back to the compensation board. They turn around and tell you it is not compensable, that you are capable of doing some employment. You go to unemployment insurance. They say, "Oh, I'm sorry. You can collect only if you've been working consecutively. You've been off for a year and a half. You can't collect."

Mrs. Stoner: I, too, would like to express my gratitude for your

coming here from Saskatchewan. It really is important to all members of the committee to get your perspective on your situation and how it relates to Bill 162.

I would like to go back to some of the things you have said. Particularly, you referred to the reviews in Saskatchewan in 1982 and 1986. You read, it seemed to me—I would like the Hansard and also the documents that you read from—a definition of suitable and available works that were recommended in the review process. Is that right?

Mr. O'Connor: Do you mean what they were talking about as suitable and available?

Mrs. Stoner: Yes.

Mr. O'Connor: The problem is that "suitable and available" had to be defined in regard to when I was talking about deeming. It had to be after all of that, after they were retrained and everything else for a job. That is what they were talking about with "suitable and available." The thing is that I think what they really meant by it was that it was suitable to the injured worker, to his position. That is what they were trying to determine.

Mrs. Stoner: Yes, I agree; sure.

Mr. O'Connor: As for the availability of a job, that was to be in consultation with the injured worker and with the establishment of a career counsellor. It is not just definitions; it is how those definitions were part of the overall recommendations. But they just were not carried out. What the board saw in that was a really quick way to get rid of injured workers.

Mrs. Stoner: But it seems to me that as I read what is in your bill, there are absolutely no criteria in Saskatchewan for the possibility of a job. It says nothing about availability, and that related to the story you told about the boilerman who was trained but there was no available job. Right?

Mr. O'Connor: That is right.

Mrs. Stoner: So that is one of the flaws in your bill.

Mr. O'Connor: Yes.

Mrs. Stoner: That is agreed. What we are trying to do is find a way to improve our situation by making sure the jobs are available.

Mr. O'Connor: Right, but then you go back to how much money you are spending now. You are going to have to hire a lot of people to make sure, because you are going to have to end up predicting the future. There could be 50,000 jobs for computer analysts now. You have people in these programs for two years. When they come out there are 100,000 people looking for 50,000 jobs. The Saskatchewan Workers' Compensation Board specifically states, and workers have been told this many times: "We are not an employment agency. It's your job to get the job. We'll train you and we'll deem you and you find your job."

Mrs. Stoner: I want to clear up one point with you. Is it true that in Saskatchewan there are absolutely no return-to-work provisions in your bill as it stands? Is that right?

Mr. O'Connor: Do you mean a right to return to work?

Mrs. Stoner: Yes.

Mr. O'Connor: To your previous employer? No, there is none.

Mrs. Stoner: None in the bill; okay.

Mrs. Sullivan: Mr. O'Connor, you have spoken with great passion relating to the system and the experience you have had with it in Saskatchewan. I think everyone on the committee appreciated your bringing to our attention the two review committees and the kinds of changes they have recommended.

One of the things I was interested in was your statistics on the change in the number of appeals in Saskatchewan following the move to the dual award system. I understand that since the system was introduced in Saskatchewan there have been substantially more appeals on rehabilitation and retraining elements than on benefits elements. I wonder if you would like to speak to that to a certain extent.

Mr. O'Connor: Oh yes, definitely. Most of our appeals that come towards the board now—I would like to make one comment about the appeals. Prior to the 1988 review committee, the board always used to indicate how many appeals were sent to the board. They do not any more. I do not know why, but they do not. They sent a letter out to us to fill out what we would like to see in the annual report. We sent them a letter saying we would like to see this and they said, "Yes, we've had many requests for that, but we feel people are misusing the figures so we're not going to give them any more."

In relation to the appeals, most of our appeals are to do with deeming, because they are deemed capable of working, and then the rehabilitation after that. What we have to do first is get rid of the deeming so that we can get them rehabilitation, because if they are deemed to be capable of working, they are not entitled to rehabilitation. We have to get rid of the deeming first and then get on to the rehabilitation. Then you have some real problems after that.

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Mrs. Sullivan: Do you think your legislation would be stronger if there were an obligation on the employer to reinstate the worker?

Mr. O'Connor: It all depends. What we have is something similar to what the board used to call "light duty." One prime example is one of the major iron companies in Saskatchewan. What they do is to have a light duty program where they bring them back after an injury and put them in counting bolts or sweeping the floor or something. But when layoffs come, they are the first ones to be laid off and not recalled. What happens in that case is that the worker goes to the compensation board saying, "Well, you know, I can't work." The board says, "Well, you were working, so you're deemed," and that is the end of that. The guy has his injury and no job.

As far as anything to do with forcing employers, or with legislation to ask employers, to hire him back is concerned, first, the problem is that if he is an industrial carpenter and he cannot do the job any more, what can he do within that? We have talked to the unions in Saskatchewan about that. Because

he is an industrial carpenter, he would have to be working on a construction site, and if he cannot work on it, then he is not a carpenter any more.

The unions are saying, "What we're going to do is we're going to start hiring more disabled people within our union to work for the union." They are willing to do it in that respect. But with regard to asking the employers to hire these people back, I think what you have to do is retrain them so they have good opportunities and job incentives to hire these disabled people, and that will clear it up. That will be the key there.

Mr. Carrothers: I guess most of the questions I wanted to ask have already been asked, but I am wondering about this: You started off your remarks mentioning that the philosophy of what Saskatchewan was trying to do was a good one. Then you told us what the problems are. You have mentioned the two reports and I think given us some understanding of what they tried to accomplish. I take it that much of those reports has not been implemented, so I guess my question is, if those reports were implemented and the types of changes made that those reports suggested, would the Saskatchewan system then meet the philosophy you said at the outset of your remarks was a good one, and would it work?

Mr. O'Connor: The thing is that it is like everything else. We will not know. The old saying is the pudding looks good, but the only proof of the pudding is eating it.

We have even had, as an association, disagreements with the recommendations put forward by the review committee, and we outlined them in a brief we submitted to them. But if they were implemented, we would have to wait another three or four years to find out what was going to happen. We do not know. As I said, they are recommendations. If they are not implemented, then we are never going to know, and if they are implemented, we are going to have wait four or five years to find out again. Then we will go through the whole system. But all the time we are doing this, we are experimenting. That is what you are doing. You are experimenting, and Saskatchewan is good at experimenting, but you are hurting so many people in the meantime.

Mr. Carrothers: I guess what is going through my mind when I listen to this is that you mentioned in your comments a simple, easy to understand system. I find that the sort of rough and ready system we have here may well have that ease of administration and simplicity, but it does not meet the individual needs. Almost by implication, your system, in order to try to help, is going to have to get more complicated. You can trade off too much, making it too simple.

This type of direction Saskatchewan has gone in and that is being proposed here, trying to become more individual, trying to look at the cases, building in—you see, what I think I hear from the reports you laid out was that if you can talk about legitimate expectation, reasonable expectation, and these are phrase I heard you say, of being employed—in other words, get a system that is going to talk about reality, talk about things people can do in their localities, talk about real prospects and try to make sure people get those opportunities.

If that were instituted in the Saskatchewan system, I think that might be the way to take it, or maybe, not dealing with your system but just with that sort of broad brush, to take the system in that sort of direction.

Assuming we can make it work, that is a way to move, just in a very broad statement, not dealing with the details.

Mr. O'Connor: Right. I really think that, number one, what you have to do is design the legislation with the injured worker in mind, and then you have to eliminate any deeming provisions whatsoever within it.

Mr. Carrothers: And by eliminating—

Mr. O'Connor: No deeming. As far as I am concerned, the only times deeming is legitimate are, one, if the person refuses physical or vocational rehabilitation, and then he should be deemed because he does not want to return, or two, if he retires from the workforce. Those are the only times.

Mr. Carrothers: When you say to take away deeming, what I think you hear you saying is limiting discretion, trying to deal with actual things and taking the capriciousness, if I could use that term for what—

Mr. O'Connor: Yes; no abstracts. What you are giving here is you are giving power to the board to play the game of deeming, and while it is playing it, it is going to be making—

Mr. Carrothers: Obviously, somebody is going to have to administer it; somebody will be making decisions. Perhaps appeal rights and those sorts of things, if they could be in a system, to try to act as a doublecheck would take the system in the direction you might want to go.

Mr. O'Connor: But you do not want to increase the problems with appeals. You do not want to have these appeals. What you have to do is make the legislation absolutely clear and concise so that everybody can understand it, like they have in Manitoba, as Marion Endicott indicated. Make it very, very strict and clear so that the board understands it, the injured worker understands it when he reads it and anybody who represents him understands it.

We call the Workers' Compensation Act an interpretative act in that it has all kinds of little catch phrases like, "the board may," "the board can," and "if the board is of the opinion." All these little opinions and stuff like this give them just what they want. Any changes that any working groups suggest, the board is going to fight like crazy because it does not want to see its power taken away. If you start pulling their power away, the job is no fun any more: "Gee whiz, here I am. I'm chairman of the board and I've got no power. All I'm doing is pushing pencils. This isn't fun."

It is not that I am saying these people are sadistic in any way, shape or form, but some of the claims counsellors I have seen get great glee out of watching you squirm at the end of a termination. They like it. Of course, I have also seen a few claims counsellors who ended up in hospital because of it.

Mr. Chairman: We seem to be running out of the time these people wanted to allocate to questions, Mr. Carrothers.

Mr. Carrothers: Just as a final point, you mentioned yourself that any system has to have a certain amount of discretion. I guess the question is how much and how you are going to put the checks on it. That is the point I was making about appeals.

Mr. O'Connor: Oh yes. You have to have checks and balances, but I

think what you have to do is make sure the balance is in favour of the injured worker, not in favour of the board.

Ms. Endicott: I would like to make a couple of comments to follow up before we get to the next point.

The first point I would like to make is that the scenario Mr. O'Connor has described so graphically here of the inhuman approach by the Saskatchewan board is the same approach we see by the present-day board in Ontario, and I think you all will agree with that. Having that translated into the context of Bill 162 will be an absolute nightmare for injured workers in this province.

I would like to make a couple of other points. One is that perhaps it is already clear to you that we need to multiply the drastic increase in appeals that is occurring in Saskatchewan and the major increase in administrative costs by 10 or 15 in order to get the picture in Ontario, because we are not talking about 30,000 accidents a year; we are talking about 450,000 accidents a year.

The other point I would like to make is that Mr. O'Connor commented on how people are being deemed to be able to go back to work, even though they cannot, because their attitude is preventing them. His advice now to many injured workers is to go see a psychiatrist to make it clear and get a statement that they do not have a psychological problem.

I neglected to note when I was going through the provisions for deeming provided for in Bill 162 that one of the things to be taken into consideration is the personal characteristics of the worker. How is the board supposed to use that? Is that supposed to be something in the worker's benefit or will the board use that in the same way the Saskatchewan board is using it to say, "It's an attitude problem you have and therefore we'll deem you to have no loss of earnings"?

Finally, Mr. O'Connor was talking about taking the board to court, and I think this is what we can expect to see if we have Bill 162 in place. As people become less and less hopeful about the situation and in despair once it is implemented, they will increasingly turn to other measures to redress their wrongs. The courts are the obvious route and I think we all agree we do not want to go that route.

Those are my final comments. Thank you.

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Mr. Buonastella: Incidentally, I had my copy of the brief with my notes. It says "Orlando" on top. If anybody has it, I would like to see it.

Mr. Chairman: Is there going to be time at the end of your remarks for some further exchanges with members of the committee?

Mr. Buonastella: I think not because of the problem of continuity.

Mr. Chairman: It would be nice if there could be some because there are some members who have not had a chance yet to ask questions who would like very much to.

Mr. Biggin: There will be a period at the end when we can sum up and have questions.

Mr. Buonastella: I want to touch on the two tabs, the first one being tab 2, which is entitled, "The Current Injured Workers and Bill 162." I understand that there is not going to be time for me to go through this in any great detail, but I want to point out to you that we have spent a lot of time on the issue of current injured workers. We understand that other submissions, as you have heard, have not dealt with this problem in great detail. Our membership and our clients belong to this category and we have gone through a lot of detail in it. I hope you appreciate that perspective and go through it because other briefs, as I have said, may not have paid particular attention to it.

There are a few points on it, though. A lot of the injured workers here today have been complaining year after year, in all seasons of the year, about the fact that their pensions do not reflect the pension a new injured worker will have. This problem has somehow become forgotten by the Minister of Labour (Mr. Sorbara). What do we mean here? An injured worker who got injured in 1960 or 1970 or 1980 goes to the supermarket and does not get any discount. He has to pay the same as the others. Yet the value of his pension does not reflect what the pension would be if he had been injured yesterday, last week or last month. It is an incredible difference.

Let me just give you a figure, just a quick example. This is an injured worker by the name of Eugene Halstead. His injury was in 1957. His pension today is \$91 a month. We have looked at the job he was doing. We have checked with them on how much he would be making today and had them calculate for us how much the pension would be today if he had been injured today with the same pension. The pension today would go from \$91 to \$160.42. This gives you an idea. A lot of injured workers here today understand this very well and it has been a frustrating problem for a lot of them.

We have talked to different governments of different political stripes time and time again. Here we have a law that is supposed to be the result of long years of study and they forgot about this problem. Come on, what is going on here? It is a bill that forgets the problems of injured workers rather than trying to resolve them.

Another problem that has been raised time and time again is return-to-work provisions. Every demonstration at Queen's Park has said, "We want the right to return to work." What do we get? For the new injured workers, we get a very limited right that contradicts the provisions of the Human Rights Code, as you have heard time and time again.

What about the injured workers who already got injured? There is no protection whatsoever. Think about it. If Bill 162 comes in, and we hope it does not, the day after, a worker who has worked for one year for the company may have some limited protection. A person who got injured the day before with 25 years of service will have no rights at all.

Injured workers are one family and now Bill 162 creates a divided family: Injured workers of yesterday, injured workers of today and injured workers of tomorrow. We are one family and we want to remain one family. We want you to understand this.

Mr. Sorbara has gone on radio, has spoken in different meetings and has told current injured workers: "Do not worry; your pension is safe. Nobody is

going to touch your pension. The pension is a sacred trust." The problem is that the pension is not going to be given by Mr. Sorbara; it is the Workers' Compensation Board that decides the pension. It is like having a Ford car and having a warranty from General Motors. It does not work. You need a warranty from the same company.

Do you know what is really sad? We are seeing many injured workers come in and tell us: "I have received a pension for one year." I have seen two cases recently. We did not see this before. I have quoted a case from page 5 of the second tab. This is from the letter that the worker received.

The letter says this: "Your life award of \$150.24 a month has been cancelled as of January 25, 1989. [It has] been awarded...provisionally for 12 months. ...It is expected that your condition will improve and your pension will be reviewed on or about December 25, 1989." You see? This is how secure pensions are.

Mr. Biggin: Can I interject here for a second?

Mr. Buonastella: Please.

Mr. Biggin: The Union of Injured Workers had a meeting with the minister only last week, and at that meeting we brought up this issue. The minister said he knew of no case where this had actually happened. We have seen case after case after case and have indicated in our brief that it does happen. I think the minister needs a little bit of education about really what is going on at the compensation board.

Mr. Buonastella: A couple of more quick points on current workers. We are told, "Listen, you will get a supplement equal to old age security of about \$320 a month." But what we are not being told is that there are so many conditions attached to that small supplement that it is going to be very hard to get. You may get it in two ways; first of all, if you are unable to return to work and it is unlikely that rehabilitation will help you. But what we are not being told is that the decision on whether you can return to work is going to be based on the opinion of the board; not your opinion, not the opinion of your doctor; the opinion of the Workers' Compensation Board.

Do you know, if the pension is 10 per cent, if it is 20 per cent or 30 per cent, the board says: "Look, you have a small disability. You can still work." So a lot of these people will not get the supplement because the opinion of the board is that they can work. Let me tell you how opinionated the board is: very opinionated.

We want to show you a file. This is for one person. I know there are much thicker files, but this is just an example of how opinionated the board is. The worker involved was told by the board that he cannot lift any more than 15 pounds. Do you know how heavy this is? We put it on a scale, and just the file—we did not weigh the whole thing—is 26.4 pounds.

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The other way you can get a supplement, this great supplement of \$320 a month, is if you have a wage loss if you are a current injured worker. But stop for a second. When the compensation tribunal had their hearing on Villanucci, they had Henry McDonald to testify. They asked him about the subsection 45(5) supplement and the wage loss. Mr. McDonald told them, and it is on the record, that he thought the full wage loss supplement would be

available indefinitely. Here is the great reform we are getting. From a full supplement we can get under the present act, we are getting a partial supplement equal to \$320. That is a great reform. That is why we call this not the carrot and the stick but the plastic carrot and the stick.

I am skipping over this section, but you know why I have to do this. It is possible to change the system by reforming the present act. You do not have to go into this incredible problem of deeming under the so-called wage-loss system. We already have a combination of wage-loss system and permanent pension system. It has evolved ad hoc over the years. We already have a system that can work now. It can be improved and you do not need to step into the danger of deeming and reaming.

The other section I want to talk about—it is in tab 1—is entitled Will the Real Liberal Party Please Stand Up? I want you to understand that we did not come with this title as a beginning. It was a conclusion, because who wants to antagonize the majority? We want to convince the majority. We were participants in the standing committee hearings of 1983. We remember who was there and who was not. We went through the record and we checked how the Liberal Party spoke and what it said in 1983. What a great change it is from Bill 162 today.

We came to the conclusion that we were dealing with two Liberal parties. We are bringing this to you not as a way of throwing mud at politicians—that is not why we are here—but as a way to show you the record.

Let me just talk about the position of the Liberal Party on deeming. Today, we hear that deeming may work or we have protection. The words "suitable" and "available" are there. We also hear today that we are going to have protection through regulations. We are being told: "Accept this bill in principle. We'll fix it later. It can be fixed." In 1983, your position was completely different from this. Let me just quote. This is what Mr. Sweeney, a prominent cabinet member, said:

"It is the [word] 'available' that concerns me...For example, as I am sure you are now aware, there are some situations where workers are simply told, 'There is work out there. Go and find it.'

"The other difficulty is that it may be available, but it can be available in such a geographical location as to put considerable hardship on a worker. It can also be available in the sense that it might be available for three or four months, but it is not a job that is going to last.

"It is all these connotations of 'available' that concern me. In the general definitions at the beginning of the draft bill, there is no reference as to how you tighten that down. It is too loose. Those of us in the Legislature who work with compensation board people fairly frequently know that those are kinds of things that cause many of the conflicts."

After this, Bill Wrye, who was the Minister of Labour just before Mr. Sorbara, said this:

"I must tell you, as a member—and I think this is what John is getting at—that I view writing an act without the definition of the words 'suitable' and 'available,' leaving all of that discretionary power to jurisprudence, or the board, or a combination of both, extremely frustrating.

"Perhaps it is unfair on my part, professor." They were talking to

Professor Weiler. "However, I find it most frustrating because our history of relations with this board—with all due respect to the members of the board who are here—has not been the type of history that would lend itself to this kind of discretionary power. I honestly think that injured workers, and those of us who have had dealings with them, are going to find it very frustrating....

"How can we do that without a definition of 'suitable' and 'available'? I just do not understand why we are going to leave all that discretionary power in the hands of the board, or of jurisprudence, as you have described it.

"As a legislator I have a real problem with saying we are going to set up this appeal board and give them all the wide-ranging power to give us a set of jurisprudence on the words 'available' and 'suitable' when, in point of fact, those of us who are elected, on behalf of injured workers...ought to have the political courage to begin to try to define these words. If we do not have the political courage, I quite frankly do not understand what the hell we are doing here."

The quote continues and it is for you to read clearly.

The most important point is that at the end of the hearings in 1983, the Liberal Party minority—and the minority was made up of Bill Wrye, John Sweeney and Jack Riddell—agreed with the majority decision on the definitions of "suitable" and "available." They agreed that suitable work should be "work which the individual is physically capable of performing for which the individual is qualified" and "which does not place unrealistic demands on the worker."

The committee also agreed that the board should make an assessment of suitable work only when the worker was fit and had either recovered from his injury or had received proper vocational rehabilitation. It was also agreed that work should be considered "'available' to the worker when the worker had actually been offered specific work that is suitable to the worker." Quite a different position.

The same goes for the question whether the board can be trusted to be fair. Without going into details, what I have just quoted tells you how, in 1983, the Liberal Party was very sceptical of giving the board more power. They did not trust the board to be fair, based on their own experience with clients and constituents.

Let's look at the attitude to the deduction of Canada pension from compensation. Bill 162 extends this principle. Even Quebec pension plan benefits are now deducted. Injured workers, for the longest time, have said: "Canada pension is one thing, compensation is another thing. Don't touch them." In 1983, the Liberal dissent said workers' compensation board benefits should continue to be considered separate and apart from Canada pension plan benefits—quite a different position.

To go to page 8, maintenance of employment benefits for injured workers, in Bill 162, these benefits are maintained for only one year, provided that the worker keeps his or her own benefits paid up. In 1983, the Liberals felt that the whole share should be covered by either the company or the board, and they felt that they should go beyond one year.

Earnings ceiling: As we know, Bill 162—I am looking at page 9—will gradually raise the ceiling to 175 per cent of the average industrial wage. In

1983, the Liberals proposed the complete elimination of the earnings ceiling in five years. This is already the sixth year, so one would expect that Bill 162 would have proposed the complete elimination of the ceiling, correct?

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Lastly, what we want to do is this: the cost of the reform. How much is it costing? Mr. Sorbara seems to be saying: "I'm not going to spend a penny more on compensation. It has to be cost neutral." In 1983 and today we are showing that the compensation cost of Ontario is not out of line with either the United States or the other provinces of Canada, with only one exception. We looked at the Peat Marwick study; that is on page 13. The only exception is British Columbia. Do you know what happened in British Columbia lately? There has been a Social Credit government.

We find some kind of contradiction happening here. On one hand Mr. Sorbara says some people are showing anger and are misfortune tellers, because we are advocating reforms that may cost a little more. In 1983 the proposals of the Liberal Party were costed out by Professor Weiler. They were not cost neutral; they added 50 per cent more to the total cost of the present system. We are being told that we are misfortune tellers today. Were you misfortune tellers yesterday? That is not the question. We have to look at improving the system. Every group in society has a right to improve. Why are injured workers supposed to be tied to cost neutrality? They should have the same treatment as everybody else.

This is the very last point; I apologize for being too long. The last point is that we feel that speeches are made in the United States about Ontario being the most prosperous province, and the most activist social legislation should also be heeded in Ontario, especially towards injured workers. If we are a progressive province, let's not accept a bill that is reactionary, a bill that even the Tory majority could not accept in 1983. If we are so prosperous, why are we being so cheap with injured workers? Thank you very much.

Mr. Biggin: Mr. Chairman, I am going to introduce Joe Zenga, who is president of the Union of Injured Workers, and then I would suggest that you open the floor to injured workers who would like to make a presentation with their concerns about Bill 162, because this is the injured workers' day. Is that agreeable, Mr. Chairman?

Mr. Chairman: If that is agreeable with the committee, we can proceed. I would just put to you again that there were a couple of members who would like to have asked a couple of questions.

Mr. Biggin: Let me clarify. We are going to go back at the end to a summing up. We will open it for questions, and then we just wanted to make our recommendations at closure.

Mr. Chairman: Okay.

Mr. Zenga: Mr. Chairman, I am going to be brief on my presentation. I cannot go into a lot of details because of language problems, one of the most important things the government should take care of in this bill. Ninety per cent of the injured workers have a problem with the language. This is the most abused situation at the WCB, because they cannot explain themselves in relation to the complaints. They just neglect the request of the injured

workers. I am not going to go into my own problem. Probably later on I will emphasize my own problem.

I studied this bill and compared it with the one in 1985 when Bill Wrye screamed and said the bill's amendment was one of the best. At that time, when I was just an injured worker, not president of this union, I almost laughed at what he said because at that time we said, "No, this is no good for the injured worker." At that time, we stated that there were a lot of things wrong with the bill.

That was in 1985. Now we come to 1988, the amended bill by the Minister of Labour, Mr. Sorbara, and we start all over again. I will never forget Mr. Sorbara, when all the injured workers got a little bit mad in relation to this bill. He ran to the channel 47 studio and proclaimed in Italian, "This bill is the best so far to be put by the government."

Which one of these bills will be the best? Which one of these bills will give us the opportunity to live and use the remainder of our lives in peace? Which one of these bills can we recognize is one of the best bills? As far as I am concerned as an injured worker, none of these bills is good. I call it worthless because it is so confusing. Even you people in your own parliament, members of the Liberal Party, have said, "We don't understand everything they say here in this bill."

There is one thing I want to say to you. As my friend from Saskatchewan says, before you make any decisions, make sure that you are going to release something good for the injured workers. I agree with that, but I do not agree that you will be able to understand the real problems of injured workers. The best way that I can phrase it is to say that if you get hurt and go on compensation, then you will know what it means to be under the compensation board.

I came to this country in 1954. I became a citizen of this country in 1966 and I will never forget the judge saying, "You should obey any law in this country and the law in this country will work for you." So far, it seems to be the reverse situation.

We go to the compensation board and we already find out that Bill 162 has already been used. We talk with people to find out what the problem really is. Then the injured worker tells the problem to the WCB and the WCB says: "There are too many callers. It is too much bother for us and there are too many questions." Do you know why? Because the bill itself is not clear as to what we should ask for.

Then there are the regulations. The committee knows them better than I know them—the regulations which are not stated anywhere yet, which will come later. Only you people know the regulations, not the injured workers. When the bill is passed, 50 per cent of the regulations will take effect with the act. Then the Workers' Compensation Board will mostly use the regulations and not the act, because the regulations are the ones that will give more power to the WCB than it has now.

I want to cut it short. As I mentioned before, I am sorry for many people—Italian, Greek, Spanish, Portuguese and so on—every nationality. They suffer because the bill itself is not stated clearly so that they can read it themselves. We cannot go to a lawyer. As you know, just to put a question to a lawyer will cost \$100. To have an appeal put through a lawyer will cost \$300 or \$400. Then there is a delay in the WCB system, done on purpose because it

knows that the majority of these people behind me will drop it because they are fed up with the system.

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If they insist, like I did, probably they will get somewhere, but the somewhere starts from A to Z from one to 10 years before you get an answer. If the time comes, the ones who will suffer the most are the old people. I am going to put it to you this way: The compensation board asks us for so many details, so many explanations, and you have to follow the edge of the knife because as soon you omit something it will say: "Hey, hey. You didn't follow our regulations. You are going to be dismissed and you are going to be cancelled from the system because you are not co-operating. You didn't do what we told you to do. You did not give us what we ask you."

When they do that, they do it on purpose, because they know it is so confusing that these people, sooner or later, are going to say, "Forget it. I have to live on \$100 or \$200. They are still not going to give me enough to live on, so it is better not to have a heart attack or a nervous breakdown," which so many have had already. That is what the compensation board is looking for. It finds the time. It does not find the people. It finds the time. The more time it has on its hands, the more profit it is going to make through the interest in the bank and less money sent out weekly.

I can talk to you on behalf of these people for hours, but I do not want to do that. We need you people to understand the position of these people. They work hard. They built the country, especially this province, especially this city. Now they wait for you to compensate them for what they have done through the years. Do you know what the compensation board is waiting for? A death certificate.

Mr. Chairman: Thank you, Mr. Zenga.

Ms. Yaeger: Good afternoon, ladies and gentlemen. I am an injured worker.

Interjection: Louder.

Mr. Chairman: You can tell they want to hear you.

Ms. Yaeger: I am not used to speaking into a mike.

I was interested to hear the comments of Mr. O'Connor on the treatment of the nurse in Saskatchewan. I am a nurse. I injured my back and I have had my problems also dealing with the compensation board here.

Mr. Chairman: I am sorry. Could you identify yourself for our Hansard purposes?

Ms. Yaeger: Yes. My name is Karen Yaeger. I am an injured worker and I am a nurse. I will not go into the problems I have had with the compensation board, because I have something else that I want to speak to at this point in time. I just mention that I have had to fight my way through the system, as I am sure you will hear others speaking of having to do.

What I wish to speak about today is, last Monday I had occasion to call Henry McDonald, who most of you know is the executive director at the board in charge of policy and has been chosen to implement Bill 162. I had called Mr.

McDonald to ask him if he could tell me a few of the details of what was happening with the policy changes that the board had introduced in November 1987, the policy changes to subsection 45(5).

As most of you probably know, these policy changes are a kind of forerunner to the changes in the bill which address themselves to the supplement; also, they touch upon the area of deeming. The Workers' Compensation Board has had a year and a half now during which it has implemented these policy changes and a year and a half now during which, I believe, it has been studying the effects of these policy changes.

I asked Mr. McDonald if he could give me some feedback on what was actually happening as a result of these changes: how they were working, how many people were actually being deemed to be able to get jobs they were not able to get, or able to get wages they were not getting with the jobs they were able to get; and also if he could give me some information on what kind of supplement the people who were receiving them received, what it amounted to in percentages.

Other board members with whom I have spoken—I am attending courses in occupational health and safety at Ryerson Polytechnical Institute; there are many board members there and I have asked several of them about this—have told me that it amounts to between 45 and 70 per cent. Mr. McDonald says the policy change supplement allows 90 per cent or, as he amended, up to 90 per cent. I asked him what was actually being given in fact; when someone says "up to" I become a bit suspicious. He continued to say 90 per cent. Finally, when he realized that I was pressing him on what was actually happening, he said, "Oh, that's irrelevant."

I have had a few days to think about this. Quite frankly, as an injured worker, I am alarmed at his choice of words. How our lives are being affected is to this man irrelevant? This is the man who has been chosen to implement Bill 162? What a great way to start off this new bill: the man who is to implement this bill is saying that how our lives are affected is irrelevant.

As I look at this, they have had a chance to put a portion of this bill through a trial run and to study the effects of that trial run. I am not really referring to my notes and now I am a little lost here; excuse me for a moment.

The area of which I am speaking is the area of deeming. This is the area which is causing a great deal of concern about this new bill. I feel it is very important that what has happened in the past year and a half with deeming be looked at by the board itself. I feel I have a right as an injured worker to ask about that. I feel that we, the injured workers, have a right to know how our lives are being affected. I am being told, though, that this is not so.

I feel it is very important for this committee to take a look at this particular little piece of history, this year-and-a-half-old piece of history, to study the documents at the board and at the office of the worker adviser and the Injured Workers' Consultants, and to possibly allow injured workers who are affected by these policy changes to come before you and speak about how they are affecting their lives before you consider passing this bill.

Also, I was a little upset to hear that the committee had decided not to travel to Saskatchewan and Quebec, because I think Mr. O'Connor has made a very good presentation on the value of studying that system. I feel essentially that I, as an injured worker, speak for injured workers in asking

you to reconsider that and also to consider studying the effects of the policy changes which were implemented.

Additionally—I do not know, maybe I am stepping a little out of bounds—I feel that the Ministry of Labour should also look at the attitude exhibited by Mr. McDonald in what he expressed to me in that how our lives are being affected is irrelevant. I feel this attitude is typical of the board but it is a very dangerous attitude. Thank you very much.

Mr. Chairman: Thank you, Ms. Yaeger.

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Mr. Gilbert: Hello. My name is Michael Gilbert and I am an injured worker. I have had one back injury and I have had two recurrences. I have been diagnosed as having a herniated disc.

Last June 1988, I was deemed to be partially disabled. That meant I could go back to work, with limitations. Since that time, the company has not found any work for me. I have just discovered recently that I am to be assessed for pension on May 17. This occurred because I went to a specialist and the specialist sent a report to the Workers' Compensation Board saying that it may be a year or two before I reach medical stability.

The next thing I knew, I was talking to my adjudicator about this whole situation and I said: "I haven't reached medical stability. Why I am I going for a pension?" He said, "Mr. Gilbert, we can't pay you for one or two years." It is not really whether or not I have a permanent disability that is the concern of the board. The concern of the board seems to be to get me the hell out of the way as fast as it can, so it sends me for pension.

I heard before I was sent for pension that the wait for a pension was six weeks. All of a sudden, I got notice. I did not even have a week and a half's notice that I was going for pension. This has a lot to do with Bill 162, because they are trying to get the people who were injured before Bill 162 through the pension system so they do not have problems.

At any rate, I have been off work, I have been injured for a year and three months. I have done a lot of thinking, a lot of studying of the Workers' Compensation Board and a lot of talking to people who know a lot of benefit representatives who deal with workers' compensation, and I found out a lot about it. I also found out a lot about Bill 162.

The fact is that Bill 162 has been mostly implemented already. I guess what usually happens is that the WCB sends a bunch of stuff over to the Legislature; the Legislature stamps it and sends it back. But this time, somebody got upset—some of the people in this room got upset—and demanded public hearings. That is the only reason this committee is here right now.

What I have to do now with this pension assessment coming up is to look at what my future is going to be. To ascertain that, I have to look at what compensation is going to do with me, so I look at a few things. Am I going to be able to return to my employer? No, I am not going to be able to be return to my employer; my employer is under no obligation whatsoever to take me back. That is the first thing. I am not going to get an income there.

Maybe I will get a pension, maybe I will not, maybe it will be around 10 per cent with my type of injury. At 10 per cent, before Bill 162 I would be

getting \$40 a week for life maybe, maybe for a year; I do not know. But I know one thing for sure: I am going to be getting a lot less after Bill 162. If I were getting 10 per cent after Bill 162, if I compared it to getting 10 per cent for life, I would be getting only 10 per cent for two and a half years; \$40 a week for two and a half years instead of \$40 a week maybe for life. That is the difference in what Bill 162 can do to pensions.

Supplements: I cannot live on a pension if I do not have a job. What we are looking at in regard to supplements, and this is the area I want to concentrate on more than anything else, is the whole idea that before Bill 162 the board could look at what I earned before I was hurt and what I earned after I was hurt. That no longer applies. As a matter of fact, right now the WCB is breaking its own act. It is not taking those things into consideration.

What it is doing is deeming people. We have heard this before; it is deeming people. What has happened in my case in supplement is that I have been deemed. The first thing my rehabilitation counsellor did was send me for a vocational assessment. I said: "Oh boy, maybe I'm going to get some rehabilitation. I'm going to be assessed and maybe they're going to help me out." The reason he sent me for that vocational reassessment—and I will tell you, it was a day and a half I was there, and it must have been bloody expensive at the board's expense. All they did with it is that they deemed me. The vocational assessment people gave these people a list of jobs they thought I was capable of doing at the time.

I have a whole list. I think there are about 12 of them here: community organization worker, social service assistant, community development worker, payroll clerk, general insurance clerk, appliance repairperson. I have never done any of this stuff. If I go and try to get a job doing any of this stuff, they are going to laugh in my face. If you look at the advertisements in the newspaper, for instance, they say, "experience necessary, experience necessary." You do not find junior entry positions in this type of thing. They just do not exist.

So what has happened to me is that because I have been deemed, apparently that means that I am going to get no supplement at all. All I am going to get to live on is maybe \$40 a week for I do not know how long—maybe a year, maybe a half year, probably not even that. That is what I am going to have.

The third thing I will go on to in looking at my future is rehabilitation. The last thing that I heard from the rehabilitation counsellor when he came and visited me at my house was, "Mr. Gilbert, we don't think we're going to rehabilitate you because you've got skills already." That is very strange because it seems that the skills I have supposedly have something to do with this. I do not have those skills. That is what the vocational assessment people said, that these were my skills. "You have skills already."

What are these skills? I cannot do what I was doing before. On the other hand, that is what he said to me in the same breath. He said: "I would suggest that you don't go back and work for McDonnell Douglas any more. Your situation might get worse. You should look for different work, but we're not going to help you. You get nothing from us."

Even if I were able to get these jobs, they average \$320 net a week. I was making a lot more than that before I got hurt. How I am going to end up is maybe on a \$40-a-week pension, as I said. What is my future like? I am 36 years old. All my past experience has been wiped away. I cannot do any of the

jobs that I did before because I have been hurt. I probably have been permanently hurt at the rate I am going. I am looking at not being able to do any of the things I have had experience to do before.

It angers me. It angers me enough that I am here now because what it amounts to is blatant discrimination on the part of the Liberal government in Ontario against a class of people. It is blatant discrimination against injured workers. That is the same government that has the Human Rights Code that says discrimination against people because of a handicap is not allowed in employment. Then they try to pull this kind of stuff.

That is why you have had a lot of problems around Bill 162. If you pass it and it goes through, you are going to have a lot more because nothing angers people like being discriminated against. There is nothing that angers people more than something that they could not do anything about. And yet they have to suffer for it. It really makes people angry.

I have heard a lot of talk today that the board is kind of saving money to feather its own nest and all this kind of thing. Maybe I am wrong about this. I think what is happening is that the board and the Liberal government are giving cheap health and safety insurance to employers. I think that is what this is all about. They did not talk to anybody in labour about it when they drafted this bill, but I hear they were talking to Northern Tel and people like that.

That is where the recommendations came from and that is where Bill 162 came from. That is our lives we are talking about here. I come from a plant where we had a mass work refusal in November 1987. Two thousand people out of 4,000 people in that plant refused to work legally because of the abhorrent health and safety conditions in that plant. From the Ministry of Labour, the occupational health and safety branch, there were 212 orders to have things done in that plant to make it a better, safer plant. Now we are still trying to get that plant cleaned up. We have had virtually no help from the Ministry of Labour at all. It has not been on our side. We have had to push and cajole it, as well as the company, all the way. Now the company's premiums for workers' compensation are going to be cheaper. I ask you, is that any way to encourage it to make a safer workplace? I do not think it is, at all. It is just cheaper health and safety insurance and it is just going to go on and on killing people; and that is what it is doing.

It should be obvious by now that I feel that Bill 162 should be scrapped entirely, and that I feel further, as it is half instituted already, that you have to do something there to turn that around as well. You have to reform the Workers' Compensation Board completely to bring injured workers back mentally, physically and economically to what they were before they were injured. Nothing else will do. Thank you.

1630

Mr. Chairman: Thank you, Mr. Gilbert.

Mrs. Young: My name is Joanne Young. I speak today from a different point of view, I believe, from anyone who has spoken so far. I am the widow of a worker who died of a very unusual case of cancer 17 days after his 34th birthday in 1956. I have been trying to get some justice from the Workers' Compensation Board for nearly 33 years. When my husband died, I had four children ranging in age from six months to six years. I was left to raise

those children on mother's allowance. I had no means of income. That was, of course, long before there was child care available.

I was not even allowed to see the board's file. It was not until 1982 that this group today helped me to obtain my husband's file. Since then, because it was a very complicated case, I have had some difficulty getting it to appeal. I appealed it in February 1988 and I have yet to hear a decision. I cannot even get any information as to how much longer the board will be kicking this case around.

As a result of this, I have some recommendations. In cases in which radiation or other toxins present, and daily becoming more common, in the workplace cannot easily be detected by workers, and also in cases in which the effects of such toxins may not be evident for many years, it is easy for employers to ignore their presence or even to deliberately deny their presence or the effect they may have on the workers. For example, although the Atomic Energy Control Board had been given responsibility for the regulation and control of nuclear facilities in Canada, and although the provinces had been assigned responsibility for the health and safety of workers in such facilities, it is well documented that neither the AECB nor the Ontario Ministry of Health bothered to monitor radiation levels in and around Eldorado's Port Hope refinery for more than 30 years, until the mid-1970s.

It has since been established that radiation levels both inside and outside that plant exceeded maximum permissible levels for years, until eventually in the late 1970s dangerous levels of radon gas were found in a Port Hope elementary school. That school was closed for two years while they virtually rebuilt it. The entire town then had to be surveyed foot by foot for radioactive wastes from the refinery. The damage from radiation caused by this neglect of safety regulations by the responsible parties will never be known since no comprehensive health study of the people of Port Hope has been carried out before or since.

Since the very ground upon which Port Hoppers lived and walked had, in many cases, to be dug up and replaced, the cost of the Port Hope cleanup to Canadian taxpayers amounted to millions of dollars and is, as you are probably aware, as yet incomplete. It probably never will be completed.

There must, then, be provision in the new legislation to ensure that the constant monitoring of all toxins in all places of work is never again neglected. Such monitoring must be carried out not only by the companies concerned but also by independent authorities. Workers must be kept informed of the results of all such monitoring. Unless these measures are required by law and severe penalties are provided if they are neglected, the worker's right to refuse to work in a dangerous environment is obviously meaningless.

Workers at Eldorado's refinery were required in the 1950s to wear film badges to monitor exposure to external gamma radiation when the management believed they were working in an unusually dangerous radioactive environment. During his four-year employment in that refinery, my husband wore such a badge for a 12-week period. During that period, the badge recorded a total of 4.04 roentgens of radiation, the equivalent of 134 full chest X-rays. This level of exposure was barely within the limits of the time. It was legal, but today it is considered to represent a considerable overexposure to radiation. The maximum permissible level of exposure today, even for a nuclear worker, is three roentgens quarterly and five roentgens annually, according to the Atomic

Energy Control Act. The maximum permissible levels for the public are one tenth of these; they are set at one-half roentgen annually.

The important point here, however, is that the law requires that the records of such exposure be kept on file at the offices of the Department of National Health and Welfare in Ottawa, yet recent inquiries I made at those offices before my appeal reveals that no records of any radiation for my husband are available there. The only records of my husband's exposure to radiation existing today are those which were included in the files of the Workers' Compensation Board in 1956.

Understand also that all the records of tests made on Eldorado's employees in the Port Hope refinery in the 1950s have unaccountably disappeared. These records, made at the Port Hope hospital, would include many tests made on my husband. As a consequence of this loss, workers are now unable to establish to what levels of radiation they have been exposed. These test results would be very important evidence in establishing the possible causes of a variety of illnesses which may be developing in these workers today as the period of latency for exposure to low-level radiation runs out, and yet these records are unavailable.

It would appear, then, that a thorough investigation should be made by independent authorities whenever there is any indication that records of a worker's exposure to toxins in the workplace have been lost, destroyed or tampered with. There must be provision for the careful maintenance of the results of tests made on workers or their environment for toxins. Severe penalties must be provided for those who destroy or lose such records.

Exposure of any kind which may affect a worker's health, even when no effects are noticeable at the time, must immediately be reported to the Workers' Compensation Board and investigated. In my husband's case, an accident involving the inhalation and/or ingestion of radioactive dust, which greatly concerned him at the time, was eventually reported to the board more than two years after its occurrence, a couple of months after his death, and it was only reported then because I raised the issue with the medical practitioners who were responsible for my husband's treatment at the Toronto General Hospital.

As a result of the lack of any requirement to notify the board, or at least any teeth in that requirement—I am not sure how the old legislation stands on that—no measurements of the level of radioactivity in my husband or in the dust were taken for several weeks. Once radium or any other heavy element known to be a bone-seeker is deposited in the bone, it tends to remain there, and urinalysis cannot begin to provide an accurate indication of total body burden of these heavy elements.

Because of the short physical and biological half-lives of many of these radioactive elements, especially radon and its four daughters, presence in the urine may pass undetected after a few days, having already initiated the effects of radiation poisoning.

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Urinalyses made several weeks and several months—there were two of them—after the accident which concerned my husband, which were submitted to the company and accepted by the board as evidence of negative test results, were therefore obviously invalid. Even so, the results of those two urinalyses

submitted by Eldorado, taken several weeks after exposure to radiation, each showed approximately two pico-curies of radioactivity.

While this may have been a result to which authorities at Eldorado had become accustomed, they were certainly not negative, as described by those authorities, and they were not negligible, as described by the consultants at the Ontario Workers' Compensation Board and the authors of the autopsy report written at the Toronto General Hospital.

Major penalties should apply to companies which fail to acquaint the Workers' Compensation Board with all the information pertaining to an accident and its effects. In the accident to which I have referred, Eldorado's safety engineer simply stated in a letter to the board dated October 11, 1956, "It is the writer's recollection that alpha surveys made shortly after the incident indicated much less contamination than was at first thought." That was it. He gave no measurements. He gave no data as to how the measurements were made. He gave no date when the measurements were made. Most important, however, is Eldorado's failure to inform the board of the fact that alpha radiation was extremely difficult to measure at that time, as it is still today, so measurements for alpha radiation would detect little radioactivity regardless of how much was present, and yet the board overlooked all these facts.

In his repetition of the information supplied to him during his visit to Eldorado's Port Hope refinery on the afternoon of November 7, 1956, by this very same safety engineer, an elderly gentleman who often played poker with my husband and the other people at Eldorado—they were all great friends—the board's representative states: "Alpha particles are easily suppressed. They can be shielded by anything as thin as paper. They travel a very short distance and there is little or no danger from these substances at distances greater than one inch from the source." Of course, that explains why alpha radiation is so difficult to measure.

Apparently, however, Mr. Thomson, the safety engineer, neglected to inform the board's representative of the extremely lethal effects of the inhalation or ingestion of any source—

[Failure of sound system]

Mrs. Young: Have I been cut off?

Interjection: I think you cut yourself off.

Mrs. Young: Sorry.

Alpha radiation is characterized by high linear energy transfer, or high LET, which is far more dangerous than gamma radiation once it is internalized.

It would appear that in this instance, Eldorado's officials took advantage of the fact that the board's representative had an extremely limited knowledge of radiation and its effects. This fact is borne out by the representative's comment. Mr. Thomson, the safety engineer, explained to me that there are three different types of radiation. The board's representative who went to Port Hope to investigate this accident knew nothing whatever about radiation and was very easily misled.

Perhaps the board should ensure that its representatives have at least

enough knowledge of the situation they are investigating to enable them to avoid being deliberately misled by the company.

I have a lot of other comments I would like to make about comments that were made on the autopsy report by the doctor. I understand that it is very unusual to make a personal comment on an autopsy report.

I could go on for pages, but I am afraid my time is up. I do feel that in this case the Workers' Compensation Board has been extremely negligent. It is very difficult to believe that these policies and procedures have not been intentionally implemented by federal and provincial governments in order to assist industry at the expense of the individual worker and his or her family.

Legislators who assign primary importance to financial considerations in industrial interests when planning legislation which will effect the lives and welfare of thousands should be reminded that neglect which results in the maiming or killing of human beings constitutes criminal negligence.

Thank you very much for the opportunity to express some of my ideas today.

Mr. Zakhar: I did not think this was going to happen after 1983, but I am here again. I appeared in front of this committee—different members, I guess—in 1983.

Mr. Chairman: Could you give your name, please.

Mr. Zakhar: Julius Zakhar. I am 62. I am here again to beg this committee to completely scrap Bill 162, because I do not think anybody understands what injured workers go through. I would like to bring up the rehabilitation program, what is going on with the Workers' Compensation Board.

I was injured in 1980. I had a back operation. In 1983, I was called in to be told I had to go through a rehabilitation program, then COSTI. Almost everybody behind me knows what COSTI means.

Mr. Biggin: Can I interrupt for just a second? We have two buses outside. Anybody who is going back on the buses, to COSTI or to Mississauga, should leave at this point. I am sorry I had to interrupt, but he reminded me when he mentioned it.

Mr. Chairman: Did everyone hear that announcement from Mr. Biggin? Mr. Biggin, I am concerned that your last few remarks tailed off and were not into the microphone. Could you repeat that, please?

Mr. Biggin: The buses which are going back to COSTI and Mississauga are leaving in about five minutes.

Mr. Zakhar: What COSTI means to all injured workers is you go there for five weeks, you are reassessed and then you wait. In my case, I waited until October 1983, till my rehabilitation counsellor got in touch with me. He informed me he had a job for me, which I accepted, and he sent me to this flower shop to deliver flowers.

In the four-week period, I was not first, I was not last, because that is the only kind of job the board has. After three weeks, I asked a lady: "What is my future with you? Is this a job?"

I should have stated at the beginning I worked for four years for a company. After my accident and my operation, the company did not even wait two weeks for me to recover from the operation. They fired me. I cannot do anything about it. That is what the board said.

I asked the lady and she told me, "This is not a job." I said: "What do you mean? The board sent me here as a job." She said, "No, this is just to go through." I said, "Thank you." My four weeks expired and I was on the street again and the board never ever helped me to find another job. I have to find it myself.

I went through finding jobs. I went through a rehabilitation program for 28 weeks and I ended up having nothing. I waited long enough, but after my 60th birthday the board decided that I was old enough to get the old age supplement and forget the job. I am old enough, but I wonder about all those younger people who go through this. Why do you have to make it much harder for them to get a job? In my opinion, what the compensation board is doing to rehabilitate is worse than it was 10 years ago.

I do not think they proved anything in any way. Everything is the same. For example, I had a recurrence on July 7, 1986. The ambulance took me to the hospital. The doctor X-rayed me and told me: "You have an old problem. You go back to your doctor." I went back to my doctor who operated on me. He told me: "Three weeks' bed rest and then we'll see what happens. I might have to operate again."

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They reinstated me. With fighting, I was finally able to convince the board and it gave me my temporary disability back from July 7, 1987. They cut me off, without any notice or anything, in November 1988. They cut me down 50 per cent. That means for the 50 per cent they cut me I did not receive a penny. They told me my pension is higher than 50 per cent and therefore I am not eligible for any partial disability.

On July 23, 1988, I was recalled for re-examination. I was re-examined by a specialist who told me my case was worse, my back was worse and he gave me five per cent. I cannot do anything about it. So from 25 per cent I got 30 per cent. I waited.

In August 1988, I received a cheque from the board for \$3,900, which was laughable. I did not know what it was for. It was not explained. There were no letters with it. Two months later, I received letters from the board. They made a mistake, they overpaid me. I had to pay the \$3,900 back to the board and I did. I had no other alternative.

I am asking the members of this panel if I am overpaid. I was fired from my job, I was willing to work at that job until I am 65, since 1980 I have had unbelievable losses, I have had family problems, I have had mental problems—a nervous breakdown, I should say—and I was overpaid by the Workers' Compensation Board. I am just asking these members—the last time there were more Conservatives and fewer Liberals—almost the same thing: Please, once and for ever, the Liberal Party in 1983 promised me personally, Mr. Peterson promised me, "We'll change the Workers' Compensation Board and the Workers' Compensation Act for the injured workers," and I would ask this panel to scrap Bill 162 and change it, so that we will not suffer any more.

Mr. Samaris: My name is Thomas Samaris. Chris Kelpis does not

speak English very well and does not feel confident or comfortable, so he asked me to help him. I think the easiest way is if I go through the questions, so we do not take a lot of time.

Mr. Kelpis: I was working for the Liquor Control Board of Ontario. My injury happened July 11, 1985. The accident involved my lower back. Initially, I was paid temporary benefits of \$223 a week. At some point my benefits were reduced to 50 per cent. I was pushed to go back to work while I felt I was not ready medically. At the time I had medical support, both from my family physician and the orthopaedic specialist who was looking after me, that I was not ready to go to work. My benefits, though, were reduced to 50 per cent.

In 1986 I was awarded a 15 per cent pension for my low-back injury. In October 1988 I was also paid a supplement. At that time I went through an assessment, which was supposed to assess where I was at the time so they could build a rehabilitation program. But the result of the assessment was that I was competitively unemployable and, therefore, the rehabilitation services of the board were closed. The assessment, in this instance, was used not to develop a program so that I was rehabilitated but used in a way so they could reduce benefits by denying services: "How could we help you find a job when the results of the assessment are that you are competitively unemployable?"

Presently, I am on a pension which pays me \$160 a month. Since that October assessment, I have told the board that I disagree, but I do not have a hearing date yet. This is my big complaint, that dealing with the board bureaucracy is very disturbing and someone cannot get results quickly. I am still waiting for my objection to be dealt with by the board.

I want to conclude my remarks here today by saying that I visited the board last week and complained about the delays. I was told: "The system is slow. What can we do? Do you have an alternative to propose to us? Do you have any better system to tell us?"

The Vice-Chairman: The adjudicator told you that? Is that correct?

Mr. Kelpis: Yes, Paula Shilack told me that.

The Vice-Chairman: Okay. Thank you very much, Mr. Kelpis.

1700

Mr. Chiocchio: Mr. Chairman, honourable members of parliament, ladies and gentlemen, I am an injured worker. My name is Domenic Chiocchio. I am a Canadian citizen, father of two teenagers, employed by Canada Post Corp. since early 1973 as a maintenance worker. I suffered a severe torque strain injury to the right arm and shoulder in October 1985, with subsequent recurrences on October 30 and June 25, 1987, May 10, 1988, and September 3, 1988. Recurrences are under appeal through the office of the worker adviser.

On March 7, 1988, I suffered a torn cartilage in the right knee while performing assigned duties of my employment. I was operated on on May 2, 1988, and full reports were made to the Workers' Compensation Board as treatment was administered. This injury was denied on June 18, 1988. The reason was that meniscus tear was not compatible with accident history. An appeal to this denial was submitted on November 25, 1988, by the office of the worker adviser.

The decision review branch decided on a further independent review on

February 3, 1989. I will be lucky if I hear from the WCB by the end of April.

In the meantime, I am denied group disability and workers' compensation benefits. I have been laid off since December 15, 1988, due to incapacity. I have mortgage payments of \$1,200 a month and have been entitled only to 15 weeks' unemployment insurance disability benefits.

From this brief history I hope to impress on this committee the gross disregard of the WCB for the injured worker. WCB adjudicators and decision review specialists have other stringent matters of concern than the health and the welfare of injured workers. I have presented this brief overview of my own personal experience because it is a real life experience for many an injured worker.

How is Bill 162 going to change what the system is lacking now? Would changes such as "impairment" from "disability" make a difference? It sounds less traumatic to an observer, but it does not help the injured individual.

The needs of both the injured and employers need to be addressed and managed conscientiously. Prompt contact and response to the injured worker's needs would be a step in the right direction. The reinstatement of the injured worker to modified duties and/or rehabilitation programs as the injured worker progresses on the road to recovery, and assessment and compensation for long-term pension or other benefits, would certainly be a welcome change to the present approach.

At present, injured workers are forced to go bankrupt or return to work without any concern to settle the claim as established by the rules of the WCB. Certainly, a no-fault system would be better than the present adversary system, which only bogs down the institution caught in the middle.

Society is led to believe that medical science can perform the miracles of a TV serviceman or those of an auto mechanic. The fact is that while treatment and diagnostic opinions seem to be accurate and work most of the time, we never hear the statistics of how often they are wrong or fail completely.

I have been administered laser, magnetic field, ultrasound, interferential current, hot and cold packs and chiropractic treatments, not to mention cortisone, procaine injections and a dozen different other prescription drugs for pain and inflammation. Some had no effect, while others had only temporary anaesthetic effects. I question whether after three desperate years of, "Try this," and, "Try that," I have any right to refuse any more treatments and/or I have any right to any kind of financial support.

I do not expect anyone not suffering from such conditions to appreciate the psychological frustration, the drain of energy, the loss of enjoyment of life that an afflicted individual has to endure. The only way I can attempt to communicate this agonizing experience is with a couple of illustrations.

If a pebble the size of a grain of rice or a pea managed to get inside your shoe and there was no way for you to remove your shoe and the pebble in it, how long could you enjoy your life with such discomfort? Or suppose you wanted to take a hot bath and you had to heat five gallons of water in a one-gallon container, and say it had a couple of pinholes near the bottom of the sides. Think this one through and you will see that while one is getting heated, the previous pot sitting in the tub is getting cold. Your chance of

getting a hot bath is as good as an injured worker having his claim recognized and receiving compensation for what he is entitled to.

I have read Bill 162 and presentations made to this committee by both employee and employer affiliations. While Bill 162 seems to promise employers a more practical approach at managing the injured worker, and hopefully, holding down the employer's rate of contributions, the employee affiliations hold less optimistic views for the welfare of the injured worker. Myself, being an injured worker, having made an adequate attempt to communicate with the Workers' Compensation Board, I am of the opinion that Bill 162 will not resolve any of the deficiencies of the system and will give rise to more cold-hearted treatment of the injured worker.

Bill 162 is only a Band-Aid solution to only one of the many social ills we are faced with today, such as unemployment insurance, welfare, public housing and Toronto traffic problems; trying to solve the latter with no left turns, one-way streets and tow-away zones in the central core of the city. Society has many social problems. They will not be solved with Band-Aid solutions. We need to view and take into consideration the whole social cell and its relevant components.

To travel faster, man invented the wheel, but to get there sooner, he had to learn to fly. Man has adapted to the environment since the dawn of creation. In the 21st century, man has to redefine human life and society and has to redesign or readapt to its natural environment.

Thank you.

Mr. Chairman: Thank you very much. Could you please give us the spelling of your name.

Mr. Chiocchio: C-h-i-o-c-c-h-i-o.

Mr. Chairman: Thank you.

Mrs. McLean: Good evening, everyone. Good evening, Mr. Chairman and well-wishers of the committee. I am Barbara McLean.

1710

Mr. Chairman: Sorry, how do you spell that?

Mrs. McLean: B-a-r-b-a-r-a M-c-L-e-a-n. Thank you. I was working at Goodwill and there was a man, drugged up, who threw a rock in my chest here. I tried to go back to work and I could not work. I fainted on the job. I tried to go back again; I fainted on the job again. The doctor stopped me off for a time. I had to pay a chiropractor. They sent me to unemployment. Unemployment gave me \$1,000, and I was there. This hand that I have here could not catch my head like this. It was so bad, they sent an investigator to my home. He sent me to another chiropractor. I went to the chiropractor at Yonge, and thank God, he helped me to breathe.

I tried to work again. I changed the job I used to do. I became a nurse. I went to school in the meantime. I became a nurse. Somebody hit me in the chest, and then after somebody hit me in the chest, I tried to work again. I had to lay off again. I went on compensation around a month, and then I went back again. There was a man who kicked me here, and it is so bad. Here is my

hand now. I got the hit here, and here is my hand. So I am still on compensation right now. Here is the hand right now.

I try to see if I can work. I try to do some delivery, like I bring people to the hospital. I try to see if I can work, but I am still on compensation. Sometimes I work two days, sometimes I work one. I try to work. I do not try to stay on the government, but here is my hand. I cannot manage myself up to now. I cannot do anything. I could not do anything at all, because I got the hit here and it was so bad that I feel it in my back. I thank God for Mr. Bill here, that I can meet you people through him. So that is what I have to say. Thank you. God bless you all.

Mr. Chairman: Thank you very much.

Mr. Zenga: Excuse me. Are you getting bored?

Mr. Chairman: No.

Mr. Zenga: Well, I hope not.

Mr. Groulx: Good afternoon, Mr. Chairman and ladies and gentlemen. I am an injured worker also. I was injured in 1961 when I was 21 years old. I was off for six months and I went back to work. I worked for 20-some years. Off and on, I was troubled by my injured back, but I never went back to the board for any compensation. I was self-employed at various times. In July 1984, I reinjured my back and was on compensation. I went through rehabilitation. I went through the Peel assessment board. I was at the hospital.

The board was very co-operative with me for a while. Last year, I arranged to start up my own business.

I will backtrack here a minute. I was divorced in 1985 and I remarried this past summer, a woman with three children.

I arranged to start up my own business. I secured a loan from a bank with my presentation and accounts that I was able to come up with. This was all with the knowledge of the board. They were willing to supplement my wages until I got the business going. Along with the bank manager, we agreed that it would take one year for the business to start making money.

??Frank Mabarco agreed that the board would supplement my wages through the summer. I paid myself \$150 a week. My son was operating the equipment, I had a few students working for me and I supervised. We did very well. I sent them the pay slips this fall. They sent me \$6,000, which was the supplement, and they refused to honour this six months to help me through the winter. They just cut me right off. They said, "That's it." I phoned Mr. Rowe, a pension adjudicator, as I was directed to, and he said, "Mr. ??Mabarco is gone and this is new board policy."

Here I am now. I had to borrow money to get by the winter, to eat. If they do not help me out this spring, I have contracts and everything to get going, but if they do not pay me what they said they would this winter I will not be able to start up. I cannot understand why they would go back on their word like this. It is supposed to be a new policy; I cannot understand that. Mr. Biggin is appealing it, but it is taking such a long time. Every time I

call them up they say: "It takes time. It takes time." I do not have that kind of time. This is what is happening. Thank you very much.

Mr. Chairman: Thank you. Could you give us your name, please?

Mr. Groulx: It is Russell G-r-o-u-l-x.

Mr. Biggin: You see, I just want to bring this last case into perspective. What is happening here is that Mr. Groulx has found himself caught in the bind of being trapped by the implementation of Bill 162 before it actually gets passed. That is the whole policy around supplements.

It was rather interesting. We had a public meeting about the supplement policy, where Henry McDonald came to the Joseph J. Piccininni Community Recreation Centre in late February. I wanted to check with the board what Mr. McDonald's correct title was. First his secretary said, "His title is executive director, implementation, Bill 162." I thought: "That's interesting. That'll make our meeting more interesting." Then I was interviewing somebody and got interrupted by our secretary. She said, "There's an urgent call from the Workers' Compensation Board." They said: "Don't use that title. It's not official."

In fact, we know full well, as Karen Yaeger and others have indicated, that this is exactly what his job is. If we see Bill 162 implemented, that is what it is going to mean. People are going to be cut off after a very short time. People are not going to have time to start up. This man wants to go into his own business. He has shown the board how he can run it, and they have cut him off in midstream. This flies in the face of the whole free enterprise system, but there is no other way the board could operate, because they are narrowing it down and narrowing it down even more.

That is why we say we cannot support Bill 162, because so much of the initiative is given to the Workers' Compensation Board. It is the WCB that needs rehabilitation. It is the WCB that has to prove to us that it, in fact, can run this show. I have not seen any evidence in 15 years. I think it is very dangerous, what you are doing with Bill 162.

Mr. Zenga is going to make a few comments and then we will have questions and sum up.

1720

Mr. Zenga: First of all, I want to say I am glad to see Mrs. Marland from Mississauga. I hope Mrs. Marland will fight this bill for the benefit of the people of Mississauga.

I want to mention a few points. I do not want to go over my history, because the history of every injured worker is more or less the same, from A to Z and from Z to A. The most important thing we ask you take a good look at is the system, how the laws are being used. Put something in, if you are going to do any reform at all. We are not against the law, we want the law, provided the law is perfect. We do not 50 per cent of one and 20 per cent of another. As long as it is a good balance.

What we find out, what I did find out, through the members of the union, is that the complaints are about the adjudicators, claims adjudicators and

pensions adjudicators. You have got to review the department. The problem is, in my own experience, I had 12 adjudicators in seven years.

Claims: As you know, everyone takes the claim. That is a logical excuse. They say: "Well, I just took the claim. Give me time to go over it and then I will come back." During the time he goes over it and comes back, they change to another one. This is routine with a claim. With a pension it is the same thing. Adjudicators give large excuses, "I've got to send them to the medical adviser."

It just happened to me. From September 28 of last year to last week, my claim went to a medical adviser six times, in and out, in and out, cut me off, put me back. One doctor says, "He's right," the other one says, "He's wrong." The other guy says, "No, you should compensate his claim," and the other one says, "Well, wait to send him upstairs to the other one." That is the way they do it—"You feed me and I feed you"—and then at the end there is no answer.

This is one thing that has been emphasized to me, as president of the union, by many of the members, "Please, try to look at the system, how they use it and especially how it is being served through the adjudicators for pensions and claims, because it is very important." That is a catch where they waste a lot of time. I hope you will consider this.

Mr. Biggin: I will briefly go over our recommendations. It is the very last page of the brief, the thicker one, not the appendix.

1. Bill 162 must be scrapped. It is not worth amending. I do not think we have to elaborate any further than we have. It violates the Human Rights Code. If you were to amend all of the things to satisfy the Human Rights Code, you would be stripping it quite a bit, if you took away deeming and so on. We do not want to get into this whole debate. We say scrap it and that is it.

2. The process of compensation reform must be based on a real consultation process. I feel a little bit strange because we have been through this a number of times. We actually sat down in 1984 and 1985, in some kinds of consultative committees, to talk about the formation of the office of the worker adviser and the Workers' Compensation Appeals Tribunal. We were all very optimistic then. Our optimism now has turned to cautious pessimism.

When people go the worker adviser office, they are told that they have anywhere from a six-month waiting period. Actually it not really six months; it is more like a two-year waiting period. All the clinics are overburdened. Our office is going crazy. Even some of the Liberal members in Toronto are sending their cases to our office. That tells you something about the situation that compensation is in.

You heard from the representative from the injured workers in Saskatchewan that if this kind of system is implemented, the whole question of representation and advocacy will be multiplied, so what type of consultation are we talking about? We are talking about consultation from the very ground up. We are talking about people sitting down and setting goals and objectives and going from there on and having representation from the injured workers, from organized labour and from the clinics—these are the people most directly involved with the injured workers—to draft out a bill.

The first thing the minister is going to say to us is, "Well, you're

delaying benefits for injured workers." We will say: "Okay, here are our next solutions, which are interim."

First of all, look at the current act and to make certain amendments to that act, on an interim basis. Amend subsection 45(5) to direct the board in a very clear way how supplements should be given. We want to go back to the original intention of the legislation and legislators in 1975 when even our old friend Dr. Bette Stephenson, because of whom we had a pitched battle in the Ministry of Labour back in 1978, agreed that injured workers should receive that kind of support. It is right in Hansard, so it is all there for you to see.

Also, amend section 54 of the act to require that the WCB "shall" take the steps that are necessary to aid in getting injured workers back to work and in lessening their handicap in the spirit of the Report of the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board, the Majesky-Minna report.

In the interim, amend section 136a of the act to increase the pensions for those injured workers whose awards were diminished before recent legislative improvements in recognizing increases in wages and cost of living in the calculation of workers' compensation benefits. This is the old question that is going to come up time and time again to haunt you, "What about the injured worker who was injured back in 1965 or back in 1975 or back in 1980?"

There are grave disparities, and we have got to wipe these off the book. The automatic cost-of-living increase, to have automatic increases on a yearly basis, which was one of the demands of the union that was met by the present government—I might add while it was in a minority position—did not address that particular issue. What are we going to do with people who, because of the ceiling at that time, are at such a low level, in fact maybe below the minimum? It is a very, very serious question.

Finally, we want you to think about and accept the fact that you reject the premise that workers' compensation costs are to be contained by reducing benefits to injured workers. How can we see this as being a just way to deal with injured workers? Giving them the right to return to work or reinstatement rights with some guts to them is one way of doing it, and also by making sure that the health and safety legislation is airtight and is going to offer protection to workers.

These are the ways that you can really cut costs.

1730

I think that if you are going to take the road where you penalize or punish the injured workers even more than they have been punished—and believe me, any injured worker in this province can keep you here for hours and hours; we have not even seen the tip of the iceberg today and that is because we wanted to direct the main thrust at Bill 162—it is just unfair to think that the solution to this whole crisis and problem has to be penalizing and punishing the injured workers. We have to find another way to do it. If you can start to change your thinking around welfare reform, this should have been the step preceding that, but here we are still fighting for the same rights.

Believe me, if Bill 162 is implemented, I can tell you very honestly that injured workers will be worse off than they were when we started this battle in 1975. There were changes, progressive changes, made along the road,

certainly not to satisfy our program, but there were changes made which were beneficial to injured workers. Now you want to set the clock back, and I think that creates a very dangerous environment.

We had representations from injured workers today. We had representations from advocates, people who work very closely with us. I think it is very clear. You have heard a lot of representations from workers across the province, from trade unionists and from business interests. Even some of the business interests are telling you that there are major problems with Bill 162.

We are not here because we want to be complaining and griping. We are here because we represent a problem that is a real problem in society, in the society of Ontario. It is a problem that you have to know about with your constituency offices, and that is that the injured worker must be given justice. That is what this whole thing is about.

I hope that this whole process is going to be a beneficial one. If you choose, as we are asking you to do, to set aside Bill 162, we are certainly in agreement to participate in whatever campaign it takes to rebuild the workers' compensation legislation so that it does adequately compensate injured workers and gives them a guaranteed income or an assurance of a job.

Mr. Chairman: Thank you, Mr. Biggin. At this moment three people have indicated an interest and there may be more. Miss Martel.

Miss Martel: I did not realize I was first on the list, but I think I am ready to proceed.

There is something I want to read into the record, and I am going to ask you to respond to it, Phil, because the first time I saw it, I was really angry. I was really angry because I have been working with a number of people who have been fighting this bill since about August now. They are some very fine people who work every day on behalf of injured workers and have for years and it is the same group of people that has been here since 1983 fighting the system.

I want to read it now, and for those of you who are here who represent injured workers—I see Catherine at the top, Marion, Orlando, Lorraine Smith, Arizza, Stefano—I want to see what your reaction is to this. They are some statements made by the minister on February 28 to the Corpus Conference on Workers' Compensation when he talked about this bill, and he said:

"So why are some people so angry about it?

"I think there are three reasons.

"First are those who have become angry at the system as it now exists. In the past few years we have seen the establishment of three organizations of employers with concerns about workers' compensation policies and costs. We have also seen the formation of several Union of Injured Workers organizations.

"It seems to me that every time we go near the system to fix it, this anger overflows in a reflex action.

"Second, some of those who are most angry are victims of unfairness in

the current system, who don't feel enough has been done to address their specific needs.

"Third, some people are angry—or at least are showing anger—for reasons that have nothing to do with whether the new system is better than the current one. Some think that the only solution to problems with workers' compensation in this province lies in vast increases in spending. They are misfortune tellers—and that is all they see in their crystal ball.

"These people can be expected to remain angry and try to use their anger against this bill as long as the government remains firm in its commitment to implement reforms without increasing costs unnecessarily—without spending money that is not there and is not required."

I can tell you, when I saw that, I was pretty bloody angry. I was angry at the assumption that you good people who have been working so hard against this bill do so because you do not understand the bill or you have not read it, your anger is misdirected or it is feigned anger or everything else. I would like to give you people the opportunity of responding to that because I think the statement was most unfair and most unjust and I think you deserve to have the opportunity to respond to it.

Mr. Biggin: We do quote in our brief a part of the minister's statements at the Corpus conference. I will be brief and then I will hand it over to Marion and Orlando to make a comment.

As I said, I think the minister needs to go through some re-education on this whole issue. The basic problem is a real one, as you all know. This is really an arrogant statement to come from a minister of the government, particularly when he knows that in his own constituency office there are severe problems that cannot be met. People are angry because of the present system because it is very unjust, but the so-called reform or the future system that he is proposing does not address those issues that people are so angry about and, in fact, will exacerbate them, make them worse. It is going to make them much worse.

It is absolutely absurd, as you said, to say that the representatives are manipulating the injured workers, because we do not have to manipulate anybody. You just have to sit in an office and listen to case after case come into whatever office you are working through and you can see the injustices of the system. Again, I am going to repeat this and I hope you are listening: Any of you who have active constituency offices have to see these cases. I know some of you do see these cases.

The system that he is talking about being cost neutral is in fact not cost neutral. I hope Marion is going to speak a little bit to this, but let us be very honest. We are going to have to spend some money for any reform. To say that something is cost neutral—look at the burgeoning costs of the Workers' Compensation Board and look at a bureaucracy out of control or the increasing costs of the appeal system. We are talking about giving justice to injured workers. Getting a real re-integration into the workforce through mandatory rehiring or reinstatement rights with teeth or continuing benefits for people is not all that costly in the long run and will be more costly if it is shifted to another jurisdiction.

There are many questions here. I think we just have to remember, Shelley, that he was talking to employers basically and he was trying to satisfy employers. I am afraid that if the Liberal Party does not realize that

the stakeholders, as they call them, are broader than the employer community, then there is going to be grave difficulty for you when you reach the next election, because people will really be fed up. I am going to let my colleagues address this.

1740

Ms. Endicott: Shelley, I would like to thank you for the opportunity to respond to this. The speech did serve one good purpose. It made me so angry that if ever I ran out of steam when preparing for this brief, I would just have to read it and it would reinvigorate me, because it reminded me how little Mr. Sorbara knows about the workers' compensation system.

The most noticeable thing about it is that he makes this comment about people not knowing about the system and therefore being manipulated. I simply put it to you that injured workers are the ones with intimate knowledge of the workers' compensation system, and their advocates have an intimate knowledge.

Who does not know about the workers' compensation system? It is Mr. Sorbara. We have talked to Liberal members, quite frankly—I will not name names—who admit that Mr. Sorbara does not know a damn thing about the Workers' Compensation Board and does not understand about the power. Who is being manipulated? I would put it to you that it is Mr. Sorbara who is being manipulated in this process through his ignorance about the Workers' Compensation Board, not injured workers, if that is what is being suggested here. He does not name whom he is talking about, but that certainly seems to be the presumption.

It certainly does make you mad, because injured workers have very just demands. To suggest that people who are concerned about their problems are people with some kind of agenda and who are manipulators simply casts an unnecessary shade of vindictiveness on this whole debate that we simply do not need. We have restrained ourselves from responding to this because we felt, "Why get into a fight over this kind of thing?" but with the opportunity to comment on it, I am certainly glad to do it.

I would like to make a comment on costs, which Mr. Sorbara talks about in this speech. I do not know if you have a copy of it yourself, but on about page 2 or 3 of his speech he talks about injured workers who have pensions no longer getting those pensions if they have gone back to work. He calls this "simple justice." He says: "We are shifting a quarter of a billion dollars to help meet the needs of people whose ability to earn a livelihood has been more severely impaired. This is the essence of our reform." He is quite right; that is the essence of the reform.

Then he goes on to say, looking at some charts: "...we're accomplishing these reforms—we're providing greater and fairer compensation to those who need it most—without taking any more money out of the pocket of anyone in this province." The problem is: Whose pocket is he taking this out of? It is the pocket of injured workers, and that is very clear.

The speech is simply fraught with this kind of assumption. Mr. Sorbara is so out of touch with the working people of this province, including the injured workers, that he could not possibly make a speech that understands the impact of Bill 162 on them.

Mrs. Marland: I wonder if you would just like to comment on one area. I think you are probably aware of the fact that in Ottawa, I raised the

question about this survey being conducted about the economic and noneconomic loss. It is a survey being conducted by the Workers' Compensation Board and we knew about it because of a memo from Mr. McDonald to all the staff in all the departments. We raised this question in Ottawa because we felt that if this survey was going to be relevant to this bill, then we should perhaps know the outcome of it before we proceeded with amendments to the bill.

We asked the minister to explain whether the survey referred to would be available to this committee for use in possible amendments to the bill, and we also asked if the survey which would begin in May 1989 and would be continuing for up to one year meant that the minister planned to wait for the outcome of this survey before calling for third reading of the bill.

We did receive a reply from the minister, dated March 20. If you have seen this reply, it explains why your optimism has turned to pessimism, but I just want to ask you how you feel about a paragraph in the minister's letter which says, "The purpose of the survey is to provide additional information that the Workers' Compensation Board can use in implementing and administering the dual award system after Bill 162 is passed."

When I read that, I thought that perhaps the time had come for us to no longer discuss the dual award system in any of our hearings, because the statement is "implementing and administering the dual award system after Bill 162 is passed." If it is a foregone conclusion that the dual award system will be part of Bill 162, then we are all wasting our time, at least discussing that area. I wondered if you had seen that. Now that you have heard it, what is your reaction to it?

Mr. Buonastella: I do not often make complimentary points about your party, but I would like to say that having been through the debate in 1983, I can see a big difference in the sense that in 1983 there was no dirty campaign in terms of accusing people of being misfortune tellers and stuff like that.

At that time, your party also had the foresight to wait before introducing a bill. It introduced a discussion paper, which relaxed the debate. It relaxed all the members and clearly did not allow the board to implement something that was at the debating stage. I think that was politically very wise, because if you take the other position, then you create a very unfair situation and you have a very tight debate and smart questions and smart answers and all of this that is happening.

Reflecting on what is going on, I would like to say that what I am seeing—this is my opinion—is that there is a new tactic, a new political approach by the Workers' Compensation Board and a new political approach by the Ministry of Labour. They have happened at the same time. This has coincided with the coming of Dr. Wolfson to the board. Perhaps it is a time coincidence, perhaps it is not.

But the policy seems to be this: "Move now, act now, let them complain later." This is what happened with the change in subsection 45(5). This is what is happening with Bill 162. "Move now, let them complain later." This is very dangerous. This may, incidentally, be the downfall of Bill 162, because the change in subsection 45(5), as you have seen, is politically inexcusable. But that is another point. You see, what is going on is very dangerous politically, because the principle of "Act now, let them complain later" makes for very big mistakes.

This bill is not something that you can fix later. I talked to the

gentleman from Saskatchewan who said: "The NDP went in with good faith. It looks good. They said: 'We are going to agree to this bill going through. If it does not work, in two years we will change it.'"

It cannot be done. Once the system is in place, it cannot be taken away. This is basically what I am pointing out to you.

Mr. Biggin: In responding to Mrs. Marland's comments, I meant earlier on to raise the question to the committee. I think it is rather shocking that so much implementation of Bill 162 is taking place within the board. Who really has the power here? Is it the legislators or is it the bureaucrats in the board? This is a very serious question, because any time you go up to the board representing somebody, you would be surprised at the number of adjudicators or whatever who will just tell you: "This has already been implemented. We're putting things in motion now."

1750

The legislators, we are told, make the laws in this country. The laws are not preceded by a certain pretesting, but it looks like what we are having here is a pretesting of the law that is going to be adopted some time down the road. I think this committee should address that particular issue, why the board is already implementing some of Bill 162, because it is going to come back to the government and say to the Minister of Labour and the Premier: "It's too expensive for us to go back now. Look at all we've invested in this. Here we are."

You have to assert your authority as legislators and insist that there be some accountability. You have the proof right in your hands. The minister is already proceeding as if the bill has been adopted and passed. Certainly the board is operating in this fashion. It is very dangerous for our system.

Mr. Dietsch: I have some feeling for injured workers. I want you to know that right up front. As an individual, I worked for 24 years on the plant floor. I have been an injured worker. I have gone through the system. I have defended injured workers at the board level, at the tribunal. I want you to know that your earlier comments about the feelings of individual members as they bring their own particular realm of experience to Queen's Park should understand that there are those among us who do have a feeling and an understanding.

I have been particularly moved by a number of the presentations that have been put before me over a period of a couple of weeks now, and with my previous knowledge, knowing that we have a few more weeks to go yet, I want you to know also that there has been a rather forceful presentation on the part of unions, on the part of injured workers, such as today, on the part of the labour movement and on the part of employers.

There is a mixed reaction among injured workers out there who are currently on pension who have talked to me, who feel they are going to lose the pension they already have, which is not correct.

I think it is important to note, in terms of addressing some of the confusion of injured workers and individuals in particular, like many of you sitting here today, that I along with all my colleagues sitting up here do not expect each and every one of you to understand every single word that is in

the bill. That is understandable and I can relate to that. I think it is fair to say that —

Interjection: I got a letter that said next month I lose my pension, and you are telling me, "Oh, no way." Somebody's lying.

Mr. Dietsch: I think it is fair to say that there have been presentations put before us from the labour movement and from the employers' movement that feel that rehabilitation is a way to go.

I would like to ask Mr. Biggin a question, and I am aware, through a presentation that the compensation board made before us in its earlier presentation, that it has increased some spending in terms of vocational rehabilitation and is working on a strategy, albeit that might not be the total end answer; there is a strategy that is being worked on.

Knowing full well from my experience that many individuals want that opportunity to very seriously feel a very meaningful part of society, and also recognizing that they want to contribute to society by being in the workforce, the rehabilitation aspect is something I would like you to comment on in a way that tells me whether or not your feelings, on behalf of all the people you have seen—I remember the day when we could not get an assessment out of the board. Now, in this bill, I see a move towards mandatory assessment.

Mr. Wildman: That is all you get.

Mr. Dietsch: I know assessment is what has been addressed as mandatory, but I also know that assessment is the first step. You cannot rehabilitate someone if you do not know what is ailing him.

I would like to have your comments with respect to your feelings with regard to the rehabilitation move, on behalf of the workers you have seen.

Mr. Biggin: I would like to preface that by saying that we made very extensive recommendations to the Minna-Majesky task force. With respect to Bill 162, rehabilitation is not a right, it is something that is going to be granted at the discretion of the board. As we have indicated today from our few examples, and these are magnified a thousand times across the province, we cannot leave the board with that kind of discretion. As well, the rehabilitation proposals in Bill 162 have time limitations.

What kind of rehabilitation are we talking about here? That is why we are saying the bill has to be scrapped and we start over again, because anywhere you look, it is not worth repairing. That is our position. That was our position at the very beginning, before the Ontario Human Rights Commission came out and pointed out some of the things that some of us had not picked up on. We picked up on other things with further readings, but our position at the beginning was that this bill has to be scrapped.

Now more than ever, with all of the submissions that we are reading—and we are going over all these submissions very carefully and watching the whole process, because it is very important to us—I just hope that the good feelings people have will come to the forefront in terms of realizing that this bill does not make it and it has to be set aside.

That is why I said we made very definite proposals of how to amend the current Workers' Compensation Act to make sure that we are not furthering the suffering that current injured workers are going through and we will all sit

down and do something better. We are not trying to extend this into the 21st century, "Let's have 10 more years of Weilers and studies on this thing," because we think that enough study has been done. Let's sit down and redraft a bill that is going to work. This one is not going to work.

Mr. Chairman: I speak for the entire committee, I believe, when I express my appreciation to the Injured Workers' Consultants, to the Industrial Accident Victims Group of Ontario and to the Union of Injured Workers for what you have put on today, the way you have presented your briefs. To all of those people who attended, by your attendance you have indicated your support for the very eloquent way in which those people who speak for you have presented your case.

We appreciate very much the way in which the briefs were presented this afternoon and the way in which your written brief is put together, too. I think I could safely say that it is a truly excellent brief, along with the appendices, and that I am sure the members will take time to read it, because you really do speak for an enormous number of people who have an enormous number of problems.

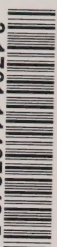
On behalf of the committee, I appreciate very much the way in which you have presented yourselves this afternoon. It has been very, very helpful.

This committee is adjourned until Tuesday morning in downtown Windsor.

The committee adjourned at 6:02 p.m.

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